

***United States Court of Appeals
for the Second Circuit***



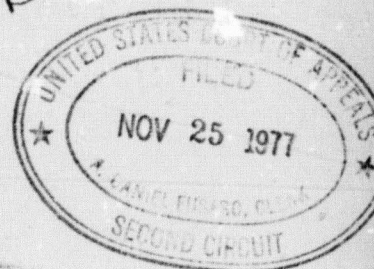
APPENDIX

NO. 77-6155

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SAMUEL M. KAYNARD, REGIONAL DIRECTOR OF
REGION 29 OF THE NATIONAL LABOR RELATIONS
BOARD, FOR AND ON BEHALF OF THE NATIONAL
LABOR RELATIONS BOARD

Petitioner-Appellant



v.

LOCAL 282, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

Respondent-Appellee

ON APPEAL FROM AN ORDER OF
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX
VOLUME 1

PAGINATION AS IN ORIGINAL COPY

INDEX

APPENDIX Page No.

(1)	Copy of Relevant Docket Entries	(ii)
(2)	Petition For Injunction Under Section 10(1)	A1
(3)	Order To Show Cause	A10
(4)	Answer of Respondent	A12
(5)	Transcript of Proceedings Before District Court	
	(a) July 20, 1977	A15
	(b) July 26, 1977	A120
(6)	District Court Findings of Fact & Conclusions of Law	A153
(7)	Order Granting Temporary Injunction	A159
(8)	Notice of Appeal	A161

DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMB
207 F	77C 1413	07 04 77	1	720		0715		WEINSTEIN, J.

APPEAL

PLAINTIFFS

KAYNARD, SAMUEL M.

SAMUEL M. KAYNARD, Regional Director
of Region 29 of the National Labor Relations
Board for and on behalf of the NATIONAL
LABOR RELATIONS BOARD

DEFENDANTS

LOCAL 282, ET AL

LOCAL 282, INTERNATIONAL BROTHERH
OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMERICA

CAUSE

National Labor Relations Act as amended Sect. 10 (1)

ATTORNEYS

For Pltff:

Vincent J. Coffey
c/o NLRB
Reg. 29
16 Court Street
Brooklyn NY

NATIONAL LABOR RELATIONS BD.
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20570
Joseph E. Mayer and
Miriam Hartly

For Deft:

Kenneth O'Connor Esq.
400 Madison Avenue
New York NY
421 3400

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
		(ii)		JS-5	
				JS-6	

PROCEEDINGS

7/77 Petition for injunction under Section 10 (1) of the NLRA filed. tk (1)
 7/77 By BRAMWELLJ. - Order to show cause filed returnable 7/20/77 at
 10:00 a.m. why an injunction should not issued enjoinng and restrain-
 ing deft from engaging in certain acts in violations of said act, pending
 the final disposition of the matters involved pending before said
 Board, etc. tk (2)

18-77 ANSWER filed. ld (3)
 20/77 summons returned and filed for order to show cause. tk
 -20-77 Before WEINSTEIN, J. -- Case called. Hearing on OSC to enjoin tk (4)
 defts held and concluded. Restraining order granted pending
 receipt of brief and decision. Defts' brief to be submitted
 by 7-25-77. Submit order. Case adjd to 7-26-77 for arguement. ld ==

26/77 Before WEINSTEIN, J. Case called. Trial resumed. Trial concluded.
 Courts findings of fact & conclusions of law read into record. STAY
 CONTINUED as a preliminary injunction under the same terms. Submit
 order. lg.

1-77 By WEINSTEIN, J. - Order dtd 7-29-77 granting temporary injunction (5)
 filed. mm

8-1-77 By WEINSTEIN, J. - Findings of fact and conclusions of law filed. mm (6)
 2/77 Stenographers transcript filed dtd 7/20/77. tk (7)
 16-77 NOTICE OF APPEAL FILED. Copy to C of A. (DEFT) (8)
 23-77 Sten. transcript dtd 7-26-77 filed. mg (9)
 26-77 Respondent's memo of law on section 8(b)(4)(d) of NLRB Act. mg (10)
 26-77 Memo of points and authorities. mg (11)
 -26-77 Supplemental memo of points and authorities filed. mg (12)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SAMUEL M. KAYNARD, Regional Director of
Region 29 of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,

Petitioner

v.

LOCAL 282, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Respondent

77 Civil

PETITION FOR INJUNCTION UNDER SECTION 10(1) OF
THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

To the Honorable, The Judges of the United States District Court for
the Eastern District of New York:

Comes now Samuel M. Kaynard Regional Director of Region 29 of the
National Labor Relations Board, herein called the Board, and petitions this
Court for and on behalf of the Board, pursuant to Section 10(1) of the National
Labor Relations Act, as amended (61 Stat. 149; 73 Stat. 544; 29 U.S.C., Sec.
160(1); herein called the Act), for appropriate injunctive relief pending the
final disposition of the matters involved herein pending before the Board on
charges alleging, inter alia, that respondent has engaged in, and is engaging
in, acts and conduct in violation of Sections 8(b)(4)(i)(ii), subparagraphs
(B) and (D) of the Act. In support thereof petitioner respectfully shows as
follows:

1. Petitioner is Regional Director of Region 29 of the Board, an
agency of the United States, and files this petition for and on behalf of the
Board.
2. Jurisdiction of this Court is invoked pursuant to Section 10(1)
of the Act.
3. On or about June 29, 1977, Active Fire Sprinkler Corp., herein
called Active, pursuant to provisions of the Act, filed charges with the Board

alleging that Respondent, a labor organization, had engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4) (i) and (ii), subparagraphs (B) and (D), of the Act. Copies of said charges are attached hereto as Exhibits 1 and 2 and made a part hereof.

4. The aforesaid charges were referred to petitioner as Regional Director of Region 29 of the Board.

5. Upon the basis of the following, petitioner has reasonable cause to believe that said charges are true, that in respect to the charge alleging violation of Section 8(b)(4), (i), (ii), (B) of the Act, that a complaint of the Board based on said charge should issue against respondent pursuant to Section 10(b) of the Act, and that with respect to the charge alleging violation of Section 8(b), (4), (D) of the Act, a Notice of Hearing should issue pursuant to Section 10(k) of the Act. More particularly, petitioner has reasonable cause to believe, and believes, that respondent is a labor organization within the meaning of Section 2(5), 8(b) and 10(1) of the Act, and that said respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b), (4), (i) and (ii) subparagraphs (B) and (D) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(b) At all times material herein, Robert Sasso is and has been Secretary-Treasurer of Respondent, acting on behalf of Respondent and an agent thereof, and John Carbone is and has been a business representative of Respondent, acting on behalf of Respondent and an agent thereof, and Edward McFarlane is and has been a business representative of Respondent, acting on behalf of Respondent and an agent thereof, and William Cody is and has been teamsters foreman - shop steward of Respondent, acting on behalf of Respondent and an agent thereof.

(c) Respondent maintains its principal office at 1975 Linden Boulevard, Elmont, New York and at all times material herein, Respondent has been engaged within this judicial district in transacting business and in promoting and protecting the interests of the employee members of Respondent.

(d) Active Fire Sprinkler Corp. herein called Active, is a New York corporation maintaining its principal office and place of business at Building 50 Brooklyn Navy Yard Brooklyn, New York, where it is engaged in the business of performing plumbing services and related services in the construction industry Active, in the conduct of its business operations during the past year, its operations during said period being representative of its operations generally, purchased goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New York, who received such goods and materials directly from other suppliers located outside the State of New York, and during the past year had a gross volume of business in excess of \$500,000.

(e) John T. Brady and Co., Inc., herein called Brady, is a New York corporation maintaining its principal office and place of business at 92 North Avenue, New Rochelle, New York, where it is engaged in the business of providing general contracting services in the construction industry. Brady, in the conduct of its business operations during the past year, its operations during said period being representative of its operations generally, purchased goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New York, and during the past year had a gross volume of business in excess of \$500,000.

(f) Burmar Electric Corp., herein called Burmar, is a New York corporation maintaining its principal office and place of business at 213-08 - 99th Avenue, Queens Village, New York, where it is engaged in the business of providing electrical contracting services in the construction industry.

(g) Novid Corp. herein called Novid is a New York corporation, maintaining its principal office and place of business in Queens, New York, where it is engaged in the performing of excavating services in the construction industry.

(h) Active, Brady, Burner and Novid, and each of them, are, and have been at all times material herein, persons engaged in commerce within the meaning of Sections 2(1), (6) and (7) and 8(b)(4) of the Act.

(i) At all times material herein the chauffeurs, drivers and warehousemen of Brady have been represented for purposes of collective bargaining by Local 282 International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers of America, herein called Respondent, a labor organization, and at all times material herein, Brady has been bound by a collective bargaining agreement between it and Respondent, said agreement being for the period July 1, 1975 to June 30, 1978.

(j) At all times material herein the drivers of Active have been represented for purposes of collective bargaining by Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a labor organization, herein called Local 918, and at all times material herein, Active has been bound by a collective bargaining agreement between it and Local 918, said agreement being for the period August 17, 1974 to August 18, 1977.

(k) At all times material herein the plumbers of Active have been represented for the purposes of collective bargaining by Local Union No. 1 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, herein called Local 1, and at all times material herein Active has been party to a collective bargaining agreement with Local 1, said agreement being for the period August 8, 1975 to August 3, 1978.

(l) At all times material herein Brady has been engaged as the general contractor in the construction of a mailhandling facility for the United States Postal Service at a construction site located at the J.F.K. site.

(m) On or about March 1, 1977, Brady contracted with Active to perform the installation of plumbing at the J.F.K. site.

(n) Brady has also contracted with Burmar and Novid to perform other installation work of various kinds at the J.F.K. site.

(o) At no time material herein has Respondent represented any of Active's employees for the purposes of collective bargaining.

(p) At all times material herein Respondent has had a labor dispute with Active concerning the failure of Active to employ members of Respondent to perform truck driving services.

(q) At all times material herein Active has assigned the driving of a jeep truck at the J.F.K. site to members of Local 1.

(r) At all times material herein, Active has assigned the driving of its trucks bringing material and supplies from Active's principal office and place of business to the J.F.K. site to members of Local 918.

(s) In furtherance of its dispute with Active as described above in subparagraph (p), Respondent threatened Brady that it would engage in a work stoppage and picket the J.F.K. site unless a member of Respondent was assigned to drive the Active jeep truck at the J.F.K. site.

(t) In furtherance of its dispute with Active, as described above in subparagraph (p), on or about June 16, 1977, June 28 through - July 1, 1977, Respondent, by its members who are employees of Brady, together with other agents of Respondent, engaged in a work stoppage and picketed the J.F.K. site.

(u) By the acts and conduct set forth in subparagraphs (s) and (t) above and by other means, including orders, directions, instructions, and appeals, Respondent has engaged in and has incited individuals employed by Brady, Burmar and Novid, and by other persons engaged in commerce, or industries affecting commerce, to engage in strikes and refusals in the course of their employment to use, manufacture, transport, and otherwise

handle and work on any goods, articles, materials, and commodities and to perform services and have threatened, coerced and restrained Brady, Burner, Novid and other persons engaged in commerce or in industries affecting commerce.

(v) An object of the acts and conduct of respondent set forth in subparagraphs (s), (t) and (u) above, was, and is, to force and require Burner, Novid and other persons, to cease doing business with Brady and to force and require Brady to cease doing business with Active and to force and require Active to assign the work of driving trucks to, from and at the J.F.K. site to employees who are represented by Respondent rather than to employees who are represented by Local 1, by Local 918 or by any other labor organization or who are not represented by any labor organization.

WHEREFORE, petitioner prays:

1. That the Court issue an order directing Respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining Respondent, its officers, representative, agents, servants, employees, attorney and all members and persons acting in concert or participation with it, pending the final disposition of the matters involved herein pending before the Board, from:

(a) Picketing at or in the vicinity of the U.S. Postal Service Mailhandling Facility located at J.F.K. Airport, Jamaica, New York.

(b) In any manner or by any means, including picketing, threats to picket or to cause work stoppages, orders, directions, instructions, requests, or appeals, however given, made or imparted, or by any like or related acts and conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by John T. Brady and Co., Inc. herein called Brady, Burner Electric Corp. herein called Burner, Novid Corp. herein called Novid or by any other person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or

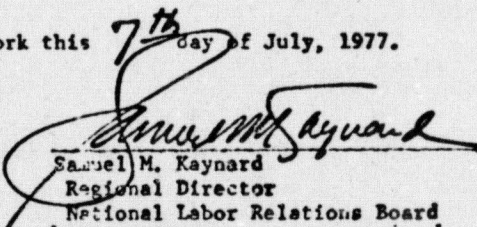
otherwise handle or work on any goods, articles, materials, or commodities or to perform any service, or in any manner or by any means, threatening, coercing, or restraining Brady, Burmar, Novid or any other person engaged in commerce or in an industry affecting commerce where in either case an object is to force or require Burmar, Novid or any other person engaged in commerce to cease doing business with Brady, or to force to require Brady to cease doing business with Active Fire Sprinkler Corp. or to force or require Active to assign the work of driving trucks to, from and at the J.F.K. site to employees who are represented by Respondent rather than to employees who are represented by Local 1; by Local 918 or by any other labor organization, or who are not represented by any other labor organization.

2. That the order issued by this Court require respondent to notify Brady, Burmar, Novid and any labor organizations representing employees employed by these companies at the J.F.K. site in writing, that it has no objection to Active or Active's suppliers performing truck driving work to, from and at the J.F.K. site with employees to whom Active or Active's suppliers have assigned such work.

3. That upon return of said order to show cause, the Court issue an order enjoining and restraining respondent in the manner set forth above.

4. That the Court grant such further and other relief as may be just and proper.

Dated at Brooklyn, New York this 7th day of July, 1977.


Samuel M. Kaynard
Regional Director
National Labor Relations Board
Region 29

JOHN S. IRVING
General Counsel

HAROLD L. RICHMAN
Regional Attorney

VINCENT J. COFFEY
Attorney

NATIONAL LABOR RELATIONS BOARD
16 Court Street
Brooklyn, New York 11241
330-7711; 7713

A7

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARDFORM EXEMPT UNDER
44 U.S.C. 3512

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CC-574

Date Filed 6-29-77

I. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

b. Union Representative to Contact John Cody
c. Phone No. (212)-343-3322d. Address (Street, city, State and ZIP code)
175 Linden Blvd.
Elmont, New York

e. The above-named organization(s) or its agents has (have) agreed in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (C)(1)(ii)(B) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about May 23, 1977, the above-named labor organization, by its officers, agents and representatives has induced and encouraged individuals employed by John T. Brady & Co., and other persons engaged in commerce or in industries affecting commerce to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services and has threatened, coerced and restrained John T. Brady & Co., and other persons engaged in commerce and in industries affecting commerce where in either case an object thereof is to force or require John T. Brady & Co., and other persons to cease doing business with Active Fire Sprinkler Corp. and to force or require John T. Brady & Co. and other persons to cease doing business with Active Fire Sprinkler Corp. and to force or require Active Fire Sprinkler Corp. to recognize or bargain with the above-named labor organization as the representative of its employees where said labor organization has not been certified as the representative of such employees under the provisions of Section 9 of the Act.

3. Name of Employer

Active Fire Sprinkler Corp.

4. Phone No.

834-8300

5. Location of Plant Involved (Street, city, State and ZIP code)
New York Avenue & Rockaway Blvd.
JFK Airport, Queens, New York6. Employer Representative to Contact
Morton Hirsch7. Type of Establishment (Factory, mine, wholesaler, etc.)
Construction site

8. Identify Principal Product or Service

Plumbing & Sprinkler Installation

9. No. of Workers Employed
14

10. Full Name of Party Filing Charge

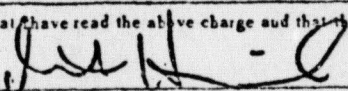
Max Active Fire Sprinkler Corp.

11. Address of Party Filing Charge (Street, city, State and ZIP code)
Building 50, Brooklyn Navy Yard
Brooklyn, New York 1120512. Telephone No.
834-8300

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By


(Signature of representative or person making charge)
Building 50, Brooklyn Navy Yard
Brooklyn, New York 11205

President

(Title or office, if any)

Address

834-8300

(Telephone number)

June 29, 1977

(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CD-237

Date Filed 6-29-77

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name LOCAL 282, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN OF AMERICA
b. Union Representative to Contact JOHN CODY
c. Phone No. (212)-343-3322
d. Address (Street, City, State and ZIP code)
175 LINDEN BLVD.
ELMONT, NEW YORK
e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (6) (1) (11) (7) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about May 23, 1977, the above-named labor organization by its agents, officers and representatives has engaged in and induced and encouraged individuals employed by John T. Brady & Co., Active Fire Sprinkler Corp. and other persons engaged in commerce and in industries affecting commerce to engage in a strike and a refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service and has threatened, coerced and restrained John T. Brady & Co., Active Fire Sprinkler Corp. and other persons engaged in commerce and in industries affecting commerce where in either case an object thereof is forcing and requiring John T. Brady & Co., Active Fire Sprinkler Corp. and other persons to assign driving work at JFK airport to members of Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers rather than to members of Plumbers Local Union No. 1 of Brooklyn and Queens, United Association or Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America or Enterprise Association Local 638, United Association of Journeyman & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, AFL-CIO, where John T. Brady & Co., and Active Fire Sprinkler Corp. are not failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

3. Name of Employer Active Fire Sprinkler Corp.
4. Phone No. 834-8300
5. Location of Plant Involved (Street, city, State and ZIP code)
New York Avenue & Rockaway Blvd.
(JFK Airport), Queens, New York
6. Employer Representative to Contact
Morton Hirsch
7. Type of Establishment (Factory, mine, wholesaler, etc.)
Construction
8. Identify Principal Product or Service
Plumbing & Sprinklers
9. No. of Workers Employed
10. Full Name of Party Filing Charge
Active Fire Sprinkler Corp.
11. Address of Party Filing Charge (Street, city, State and ZIP code)
Building 50, Brooklyn Navy Yard
Brooklyn, New York 11205
12. Telephone No.
834-8300

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Morton Hirsch President
(Signature of representative or person making charge) (Title or office, if any)
Address BUILDING 50, BROOKLYN NAVY YARD 834-8300 June 29, 1977
BROOKLYN, NEW YORK 11205 (Telephone number) (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SAMUEL M. KAYNARD, Regional Director of *
Region 29 of the National Labor Relations *
Board, for and on behalf of the NATIONAL *
LABOR RELATIONS BOARD, *

Petitioner *

v. *

77 Civil 1413

LOCAL 282, INTERNATIONAL BROTHERHOOD *
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN *
AND HELPERS OF AMERICA, *

Respondent *

ORDER TO SHOW CAUSE

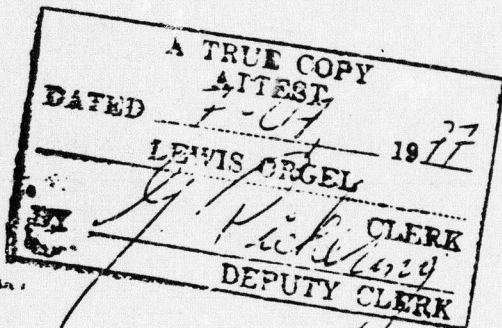
The petition of Samuel M. Kaynard Regional Director of Region 29 of the National Labor Relations Board, having been filed pursuant to Section 10(1) of the National Labor Relations Act, as amended, praying for issuance of an order directing respondent to show cause why an injunction should not issue enjoining and restraining said respondent from engaging in certain acts and conduct in violations of said Act, pending the final disposition of the matters involved pending before said Board, and good cause appearing therefor,

IT IS ORDERED that respondent appear before the Court at the United States Courthouse, Court Room No. 225 Cadman Plaza East, Brooklyn, New York, on the 20th day of July, 1977 at 10 A. M., or as soon thereafter as counsel can be heard, and then and there show cause, if any there be, why, pending the final disposition of the matter involved pending before the National Labor Relations Board, respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it should not be enjoined and restrained as prayed in said petition; and

IT IS FURTHER ORDERED that respondent file an answer to the allegations of said amended petition with the Clerk of this Court, and serve a copy thereof upon petitioner at his office located at 16 Court Street, Brooklyn, New York, on or before the 18th day of July, 1977; and

IT IS FURTHER ORDERED that service of a copy of this order, together with a copy of the petition and exhibits upon which it is issued, be forthwith made by a United States Marshal upon respondent, and upon Active Fire Sprinkler Corp., the charging party before said Board, in any manner provided in the Rules of Civil Procedure for the United States District Courts, or by registered mail, and then proof of such service be filed herein.

Done at Brooklyn, New York this 7th day of July, 1977.



ss Henry Brammell
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----x
: SAMUEL M. KAYNARD, Regional Director of
: Region 29 of the National Labor Relations :
: Board, for and on behalf of the NATIONAL :
: LABOR RELATIONS BOARD, :

Petitioner, :

v. :

77 Civil 1413

: LOCAL 282, INTERNATIONAL BROTHERHOOD :
: OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN :
: AND HELPERS OF AMERICA, :

Respondent. :

-----x
ANSWER OF THE RESPONDENT

To the Honorable, the Judges of the United States District
Court for the Eastern District of New York:

The Respondent respectfully submits the following answer
to the allegations in the Board's petition:

1. Admits the allegations in paragraph 1.
2. Admits the allegations in paragraph 2.
3. Admits the allegations in paragraph 3.
4. Admits the allegations in paragraph 4.
5. Admits the allegations in paragraph 5a.

6. Denies the allegations in paragraph 5b, except admits the allegations therein as to Robert Sasso.

7. Admits the allegations in paragraph 5c.

8. Denies knowledge sufficient to form a belief as to the allegations in paragraph 5d.

9. Admits the allegations in paragraph 5e.

10. Denies knowledge sufficient to form a belief as to paragraph 5f.

11. Denies knowledge sufficient to form a belief as to paragraph 5g.

12. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5h, except admits the allegations as to Brady.

13. Admits the allegations of paragraph 5i.

14. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5j.

15. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5k.

16. Admits the allegations of paragraph 5l.

17. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5m.

18. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5n.

19. Admits the allegations of paragraph 5o.

20. Denies the allegations of paragraph 5p.

21. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5q.

22. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5r.

23. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5s.

24. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5t.

25. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5u.

26. Denies knowledge sufficient to form a belief as to the allegations of paragraph 5v.

WHEREFOPE, Respondent requests that the petition be denied in all respects.

Dated: New York, New York
July 12, 1977.

O'CONNOR, QUINLAN & MANGAN, P.C.

By

J. Kenneth O'Connor

J. Kenneth O'Connor
Attorneys for Respondent
400 Madison Avenue
New York City, N.Y. 10017
212 421-3400

A14

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 SAMUEL M. KAYHARD, :

5 Plaintiff, :

77-C-1413

6 -against- :

7 LOCAL 282, :

8 Defendant. :

9 -----X

10
11 United States Courthouse
12 Brooklyn, New York

13 July 20, 1977
14 10:00 o'clock A.M.

15 B e f o r e :

16 HONORABLE JACK B. WEINSTEIN, U.S.D.J.

17
18
19
20
21
22 MAURICE S. DAVIS
23 COURT REPORTER
24
25

Appearances :

VINCENT COFFEY, ESQ.
Attorney for Plaintiff

KENNETH O'CONNOR, ESQ.
Attorney for Defendant

BY: J. WARREN MANGAN, ESQ.
Of Counsel

EUGENE ARONS, ESQ.
Attorney for Local 1

1
2 MR. COFFEY: We are looking for an injunction
3 against Local 282 because of the reasonable cause to
4 believe that violations of 8(b)(4)(b) and (d) of the
5 Act have been occurring and also affirmatively, this
6 would call for in the papers -- we want the
7 Respondent to notify the various trades and
8 subcontractors on the job that they will not interfere
9 with assigning the work to whatever employees it or
10 its suppliers wants to.

11 THE COURT: You gentlemen -- is this on? Are
12 the speakers on? Why don't you talk into the
13 microphone so everybody can hear you? Speak directly
14 into it.

15 MR. COFFEY: The situation here is that Brady
16 is the general contractor performing the work on the
17 Post Office of mail coming out of Kennedy Airport.

18 They have contracted with Active Firesprinkler
19 and also have subcontracts with Novid Corporation to do
20 excavating, and Bermar to do the electrical work at
21 the site.

22 Brady has a collective bargaining agreement
23 with Local 282 IBT and employs 282 employees as
24 drivers at the site, and also various other trades
25 itself.

1
2 Active has employees who are members of Local 1
3 who are the plumbers, who drive a small jeep truck and
4 small jeep around the site to bring tools to the
5 plumbers and the materials around the site. It also
6 has its suppliers bringing materials to the site by
7 their own independent carriers and it has its trucks
8 coming from the Brooklyn Navy Yard operation to JFK,
9 driven by Local 918 IBT drivers under our contract
10 with Active.

11 282 has been trying to get the work of driving
12 all these trucks from Active and has been trying to get
13 them to make only one drop for the materials at the
14 site. It hasn't been successful in doing so, since
15 Active has no collective bargaining agreement with
16 Local 282.

17 Therefore, Local 282 has put indirect pressure
18 on Brady who we believe is a secondary employer --
19 Brady and Bermar, Novid -- has been active by threatening
20 Brady that it would picket the site and actually was
21 picketing the site on June 16 and June 28, 29, 30
22 and July 1st.

23 The purpose of this picketing is to get Active
24 removed from the job site and to get Active to sign a
25 contract with 282 IBT.

1
2 It constitutes a violation of 8(b)(4)(b)
3 because it involves these neutral primary employers in
4 this dispute with Active, since 282 will shut the whole
5 job done and is also a jurisdictional dispute between
6 282 and Local 1 of the plumbers for the driving of
7 these particular trucks, and perhaps, even between
8 Local 282 and 918 for the other trucks which they
9 would not be entitled to picket for, under 8(b)(4)(d).
10 That's why we are asking for an injunction here.

11 THE COURT: How do you know what their
12 intention is?

13 MR. COFFEY: They have had various conver-
14 sations with Local 1 representatives, in which they
15 have said their purpose is to put pressure on Brady
16 to get Active to sign with them.

17 They have also had conversations with Brady,
18 saying that if Brady does not put the Teamsters on at
19 least one particular truck, the one that the plumbers
20 have been driving at the site, they would strike the
21 job, and there are other indications, also.

22 The picket signs do not conform --

23 THE COURT: What?

24 MR. COFFEE: They don't conform to the Moore-
25 Drydock standards, in that they do not identify Active

1 as the person to which . . dispute is addressed.

2 THE COURT: What do they say?

3 MR. COFFEY: They say that Brady is unfair and
4 they identify Brady as the person they have the dispute
5 with.

6 THE COURT: Even though they are trying to get
7 Active?

8 MR. COFFEY: To do something, as of July 1st,
9 Active has been taken off the site by Brady and they are
10 no longer there.

11 THE COURT: Active is doing what kind of work
12 again?

13 MR. COFFEY: They are doing plumbing work at the
14 site.

15 THE COURT: Under a subcontract with Brady?

16 MR. COFFEY: Yes, and they also have this jeep
17 truck which is being drive around the site by the
18 plumbers and they bring various materials from their
19 Brooklyn Navy Yard site to the site where the 918 drive.

20 MR. MANGAN: Your Honor, really, in order to get
21 this dispute into its full --

22 THE COURT: Speak into the microphone.

23 MR. MANGAN: I would ask you to read
24 paragraphs 1 and 2 on pages 2 and 3, the lower part of
25 page 2. I have just put an ink mark in.

1 That's the contract between Local 282 and Brady.
2 Brady is the general contractor.

3 THE COURT: Do you claim that any subcontractor
4 has to use your drivers; is that it?

5 MR. MANGAN: That the subcontractor, once he is
6 on the site, and there are any deliveries that are
7 being made from location to location on the site, is
8 work that is historically and traditionally been
9 performed by Local 282 and that that work is to be
10 performed either by Brady employees or to be performed
11 by subcontractors in compliance with the terms and
12 conditions, which is the contract of Local 282, and the
13 Local must enter into contracts with it so the Local 282
14 contract is not violated.

15 THE COURT: What about the material coming from
16 the Navy Yard to the scene? Do you claim jurisdiction
17 over that?

18 MR. MANGAN: No, your Honor.

19 THE COURT: This little jeep --

20 MR. MANGAN: Any of the work, really, I don't
21 know whether it's limited.

22 THE COURT: Is that what it comes down to, the
23 jeep?

24 MR. MANGAN: If it's on site and it's movement
25 from one location on site to another location, that that

1
2 is work that has historically been performed by
3 Local 232 and is work covered by this contract and that
4 any dispute that has existed at the site has been
5 between Brady and Local 282 for failure to comply with
6 the terms and conditions of that contract.

7 THE COURT: Have you proceeded diligently to
8 process it?

9 MR. MANGAN: Yes, your Honor. It went to the
10 Trade Board, which is the first step of the grievance
11 procedure, and the Trade Board heard Brady, heard
12 Local 282, and there was a decision that was rendered,
13 that Brady was in violation of the contract and that
14 the on-site work is to be performed by employees of
15 Brady, pursuant to the terms and conditions of Brady's
16 contract, or if it's subcontracted, that the
17 subcontractor must, as Brady would be obligated to,
18 under its contract, comply with the terms and
19 conditions of that agreement and that, in effect, what
20 the Regional Director here is attempting to do, he
21 is not saying there is a violation of law by the
22 terms and conditions of this contract, but indirectly
23 he is attacking the terms and conditions of the
24 contract by seeking to have compliance with that
25 contract by taking whatever action was taken against

1
2 Brady, in order to have compliance with the terms of
3 the contract.

4 So they say it's a secondary boycott, rather
5 than to say there's a violation of law by having the
6 terms and conditions within a contract seeking to
7 enforce them by whatever concerted activity Local 282
8 used.

9 I think it's totally improper and I don't think
10 there has been any violation and that's why we
11 refused, when Mr. Coffey hinted there would be any
12 settlement. There can be no settlement if there is a
13 violation.

14 THE COURT: They are claiming there is an
15 issue of one-stop delivery from the Navy Yard, too?

16 MR. COFFEY: Yes. The secondary boycott is
17 only one string to our bow. We say there is a
18 jurisdictional dispute here and whatever the nature
19 of it is, whoever should get the work, it shouldn't be
20 decided by respondents picketing, which they have done.

21 MR. MANGAN: It may be something which should
22 be decided in a grievance procedure under the terms
23 and conditions of the contract and that's what
24 Local 282 and Brady did and the Trade Board decided
25 there was a violation by Brady --

1 THE COURT: Was Active a party to that?

2 MR. COFFEY: No, Active was not a party and
3 was not present. They refused to be present.

4 Active is not bound by the contract between
5 Brady and Local 282. We feel that the contract
6 between 282 and Brady is irrelevant here.

7 What Respondent is trying to do is hide behind
8 this contract to organize Active from the top down.

9 THE COURT: I don't know how it could be
10 irrelevant, if Brady agrees that all work on the
11 site would be carried by 282. Why is it irrelevant?
12 I don't understand.

13 Are you claiming that this kind of a contract
14 is illegal?

15 MR. COFFEY: Your Honor, it may very well be
16 illegal.

17 As I understand it, back at the Board, there is
18 a case now pending concerning the legality of the
19 clauses in this, but we are not making any repre-
20 sentation at this time that these sections are illegal,
21 in this proceeding. What we are saying is that --

22 THE COURT: If they are legal, why isn't it
23 possible to say that anything that is transported by
24 truck has to be in a Brady vehicle or somebody using
25 282 employees?

1
2 MR. COFFEY: Your Honor, Respondent may win the
3 point here that this is their right, but they don't
4 have a right to picket, concerning the jurisdictional
5 dispute concerning them --

6 THE COURT: If Brady is violating the contract,
7 assuming they are, and the contract is legal, why
8 can't they picket?

9 MR. COFFEY: Because the labor law (8) (b) (4) (b)
10 prohibits picketing over labor disputes. They are
11 not picketing Brady here. They are picketing Active
12 and they are trying to put pressure on Brady.

13 In fact, to get Active to sign with them or to
14 get Brady to -- to get Active to put their --

15 THE COURT: I don't understand. If the agree-
16 ment is valid then Brady has to either transport in
17 its own trucks on the site, or if somebody else does
18 the transporting, they have to use 282 people,
19 assuming that's valid --

20 MR. COFFEY: Yes?

21 THE COURT: And Brady isn't doing it, why can't
22 they picket Brady?

23 MR. COFFEY: That would be a jurisdictional
24 dispute. Brady has assigned it to other people.

25 THE COURT: They have assigned it illegally, if

1 the contract is legal.

2 MR. COFFEY: This should be handled by the
3 National Labor Relations Board. We have been given
4 jurisdiction to handle such dispute.

5 THE COURT: The dispute as against Brady, if
6 Brady is violating the contract, isn't it?

7 MR. COFFEY: In essence, here, the -- Brady
8 cannot solve the dispute here.

9 THE COURT: Brady apparently, they are claiming,
10 entered into an improper subcontracting arrangement.
11 They have included in their subcontract this provision;
12 is that it?

13 MR. MANGAN: Exactly.

14 MR. COFFEY: And Respondent has remedies under
15 the law. They can bring a suit under that.

16 THE COURT: Why can't they picket?

17 MR. COFFEY: It would violate (8) (b) (4) (d).

18 MR. MANGAN: What they are trying to make is
19 Brady a neutral, rather than a primary. Brady is a
20 general contractor.

21 THE COURT: There is an issue of fact, here,
22 in any event, as to the drop from the Navy Yard. You
23 say you have witnesses?

24 MR. COFFEY: Yes.
25

1
2 MR. ARONS: I am from Local 1. If I can
3 possibly get this thing into perspective, I think it's
4 getting out of perspective as far as what has been
5 said and I have been listening.

6 The basic problem that we are concerned with
7 right now is for the last, or infinitum. The plumber
8 has always gone to the job site or shanty. I am not
9 worried about the hauling of material from the Navy
10 Yard to JFK, where it's dropped off.

11 The basic dispute is that the plumber --

12 THE COURT: They say there is also a dispute as
13 to that, but basically what?

14 MR. ARONS: Basically, what we are here for is
15 that the plumber has always driven the jeep from the
16 shanty to where he is working. He either carries his
17 tools or carries a piece of pipe to that jeep.

18 He takes the pipe from the jeep and puts it
19 into a trench and works on the pipe.

20 This dispute -- and that's, basically -- 282 is
21 claiming that they need a driver to drive that jeep.

22 MR. COFFEY: Mr. Arons, we are going speak for
23 us, your Honor --

24 MR. ARONS: Fine. Basically, what we are
25 concerned with is that our plumbers are not working and

1
2 they have not been working for thirteen days because
3 there is a dispute between Brady and the Teamsters,
4 as to who is going to drive this jeep, and our main
5 concern is to get our men back to work.

6 As you said, Brady is involved with 282 but our
7 people have been suffering because they have been
8 basically locked out because of the jurisdiction.

9 MR. MANGAN: It's Brady and 282. The primary
10 dispute is with Brady.

11 THE COURT: Has the union told Active that they
12 want them to use 282 drivers from --

13 MR. ARONS: If we can hear witnesses, Active is
14 here.

15 THE COURT: I think we'd better hear the
16 evidence.

17 MR. COFFEY: All right.

18 THE COURT: Do you want to start now? How long
19 will it take for your witnesses?

20 MR. COFFEY: It should take a few hours, your
21 Honor.

22 THE COURT: Why don't we do it this way:

23 Can you take a quick lunch? We will start at
24 12:00 and work from 12:00 to 1:00 and take a break for
25 the sentence and then work from 1:00 on.

1
2 Mark as Defendant's Exhibit A the hi-rise
3 contract of 1975.

4 MR. MANGAN: We have a consent on that one and
5 that's the contract between Brady and --

6 MR. COFFEY: Yes.

7 THE CLERK: Defendant's Exhibit A marked in
8 evidence.

9 (Luncheon recess.)

10
11 (continued next page)

MORTON M. HIRSCH, called as a witness,
having been duly sworn by the Clerk of the Court, was
examined and testified as follows:

MR. COPPEY: Before I begin with the witness,
your Honor, I just want to tell you that if your Honor
should find an object of opinion is off, that doesn't
preclude that an objection is unlawful and that's all
we have to prove. I understand. You don't have to
prove it. You only have to prove the question.

DIRECT EXAMINATION

BY MR. COPPEY:

Q Mr. Hirsch, what do you do for a living?

A I am President of Active Fire Sprinkler
Corporation.

Q And is that a New York corporation?

A Yes.

Q Where is that located?

A Building 50, Brooklyn Navy Yard, Brooklyn, New
York.

Q And what does the firm do?

A It manufactures and contracts installations of
plumbing systems and automatic fire sprinkler systems.

Q During the past year, has the firm had
purchases in excess of 50,000 from firms outside of the State?

1

2

A Yes.

3

Q Has it had sales outside the state of, in excess

4

of 50,000?

5

A Yes.

6

Q During 1977, did you contract with anyone to

7

do any work out at the JFK Airport?

8

A Yes.

9

Q Would you tell us what that was?

10

A We contracted with John T. Brady to do the

11

plumbing and fire protection work at the JFK Air Mail

12

facility.

13

Q I show you this document, which I would mark as

14

Petitioner's 1 for identification.

15

THE COURT: Mark it and let them see it.

16

Have you seen it?

17

MR. MANGAN: I haven't seen it, your Honor.

18

(Counsel looks at document)

19

MR. MANGAN: No objection.

20

Q Can you tell us what this document --

21

THE CLERK: I have to mark it.

22

(So marked.)

23

Q Could you tell us what that document is,

24

Mr. Hirsch?

25

A This document is an acceptance by John T. Brady

1
2 of our proposal to do the contract work for plumbing and
3 fire protection.

4 It denotes the plumbing and fire protection work
5 of the plant and specific issues.

6 MR. COFFEY: The Petitioner offers
7 Petitioner's 1 in evidence.

8 THE COURT: It's already marked in evidence.

9 Q How long has Active been doing any work at the
10 site?

11 From March 1977.

12 And starting in March 1977, what was Active
13 doing at the site?

14 A Installing plumbing and fire protection work.

15 Q Did you have any occasion to have anything
16 brought to the site during that period?

17 A Yes, I did.

18 Q What began coming to the site in March of '77
19 and how did it get there?

20 A Truckloads of pipe coming into the job site,
21 driven from out-of-town drivers.

22 Q Whose trucks are they?

23 A Those trucks are trucks of vendors whom we
24 hired. We hired the vendor to make a delivery.

25 Q Delivery of pipe?

1

2

A Of piping to the job site.

3

Q Where did these deliveries originate from?

4

A Alabama and Virginia.

5

Q These were independent contractors bringing the

6

stuff in?

7

A These were independent contractors bringing the

8

truckloads of piping.

9

Q Do you know if these people were represented by

10

a labor organization, the people that brought the pipes to the

11

site?

12

A I don't know that.

13

Q All right, did you have occasion to have any

14

other truck at this site between March and June 15, 1977?

15

A Yes. We had trucks coming from our own shop

16

from the Brooklyn Navy Yard, making deliveries to the JFK

17

job site, which were driven by --

18

Q Drivers of what?

19

A Those trucks were driven by Teamster Local 918

20

drivers, and we also had truck movement on the job site,

21

driven by Plumbers Local 1 drivers.

22

Q And what kind of trucks were being driven by

23

Local 1?

24

A Trucks with a smaller capacity.

25

Q How many of them were there and what kind .

1
2 were they?

3 A There were two trucks: jeep-type trucks.

4 Q What did they do?

5 A They moved material from a point on the site,
6 an unloading point on the site to the actual area itself, and
7 they helped the tools of that -- of the man and lead -- what
8 we consider smaller amounts of material than the large
9 trailer-loads that came in.

10 Q Did they also carry people around?

11 A They also carried people around on the job
12 site.

13 Q Were these small jeep trucks, were they licensed
14 for street work or only used on the site?

15 A Only used on the site.

16 Q Who drove those?

17 A Plumbers Local 1.

18 Q Do you have a collective bargaining relationship
19 with Plumbers Local 1?

20 A Yes, I do.

21 MR. COFFEY: I wonder if we could use copies
22 instead of the originals?

23 THE COURT: Yes.

24 MR. COFFEY: Mark this as Petitioner's 2.

25 THE CLERK: Petitioner's 2 in evidence, so

1
2 marked.

3 (So marked.)

4 Q Could you tell us what Petitioner's 2 is,
5 Mr. Hirsch?

6 A This is an agreement between the Local Union 1
7 and myself; Active Fire Sprinkler Corporation.

8 Q And it covers who?

9 A It's a labor agreement. It covers the employee
10 and it covers Active Fire Sprinkler Corporation.

11 Q Now, the plumbers that do the driving of the
12 jeep vehicles at the site, are they covered under that
13 agreement?

14 A Yes, they are.

15 MR. COFFEY: Would you mark this as Petitioner'
16 3, next? It's a contract between Local 918 and
17 Active.

18 THE COURT: Plaintiff's 3 in evidence.

19 THE CLERK: So marked Plaintiff's Exhibit 3 in
20 evidence.

21 (So marked.)

22 MR. MANGAN: Is that Local 918? No objection.

23 Q Mr. Hirsch, can you tell us what that is?

24 A This is an agreement between Teamster Local 918
25 and Active Fire Sprinkler Corporation.

1
2 Q Is that the agreement that covers the 918
3 Teamsters that drive your trucks from your facility in
4 Brooklyn to the JFK site?

5 A Yes, it does.

6 Q Do you have any agreement with Local 282 IBT,
7 any collective bargaining agreement?

8 A No, I don't.

9 Q I direct your attention to mid-May 1977. Can
10 you tell us what happened at that time?

11 A May --

12 Q Mid-May.

13 A In mid-May, a shop steward by the name of
14 William Coty --

15 Q He is a shop steward for who?

16 A For Local 282.

17 Q Who is he employed by?

18 A He is employed by Brady. I met him on the job
19 site.

20 Q How did you know he was the shop steward?

21 A He identified himself as shop steward and he
22 said to me, "Why don't you use 282 men on your vehicles and
23 sign up with us?"

24 I in turn said to him that I have drivers of
25 918 and that plumbers will be driving the truck inside the

1
2 job site and I had no intention of signing up with his union
3 at all.

4 Q What happened on June 16, 1977?

5 A In June 16, 1977, Local 282 put up picket lines
6 on the job site and in turn stopped the job sites -- stopped
7 some other trades from coming in.

8 MR. COFFEY: I beg your indulgence for just a
9 second, your Honor.

10 Mark this as Petitioner's 4. That's a letter,
11 your Honor.

12 THE COURT: That only refers to within the job
13 site.

14 MR. COFFEY: Yes, that particular letter is,
15 your Honor. That's from Brady.

16 THE CLERK: Petitioner's 4 marked in evidence.

17 Q Can you tell us what that is, Mr. Hirsch,
18 Petitioner's 4?

19 A Yes, the essence --

20 THE COURT: Don't tell me what it is.

21 Q When did you get that.

22 A It's a letter that John T. Brady sent to us
23 on Registered Mail on June 17.

24 Q Did you receive it on June 17?

25 A Perhaps the next day. I have a received stamp

1
2 but I can't read it.

3 MR. COFFEY: May I have this marked as
4 Petitioner's 5 for identification?

5 THE CLERK: Petitioner's 5 marked in evidence.

6 THE COURT: The fact that Brady characterizes
7 that as a jurisdictional dispute, it doesn't mean that
8 to me. Let me see Plaintiff's Exhibit 1, please.

9 (Court looks at document.)

10 Go ahead.

11 Q Can you tell us what that is?

12 THE COURT: He doesn't have to tell us what it
13 is. It's in evidence.

14 Q Did you receive it?

15 A Yes.

16 Q From Brady, on 6/27/77?

17 A Yes, this is a telegram I received from Brady
18 on 6/27/77.

19 Q Referring to Petitioner's 5 --

20 THE COURT: Are you going to put in the
21 subcontract?

22 MR. COFFEY: I already did, your Honor. That
23 was Petitioner's 1.

24 THE COURT: That is the subcontract. It's a
25 letter. They said they will send a subcontract. Do

1
2 you have a subcontract?

3 You entered into a more formal contract, didn't
4 you?

5 THE WITNESS: Yes.

6 THE COURT: Did it say anything about using 282
7 trucks?

8 THE WITNESS: No.

9 THE COURT: Nothing in the contract about that?

10 THE WITNESS: No.

11 THE COURT: I will assume that is the case.
12 You were not informed before you began work that 282
13 claimed the right to transport within the job site?

14 THE WITNESS: No.

15 THE COURT: You didn't have a copy of the hi-
16 rise contract?

17 THE WITNESS: I have been doing work for thirteen
18 years and this is the first time this problem ever
19 occurred. It's traditional, our own men have driven
20 our own trucks on the site.

21 THE COURT: You were not informed of this?

22 THE WITNESS: We were not informed.

23 MR. COFFEY: Mark this as Petitioner's
24 Exhibit 6.

25 THE CLERK: Petitioner's 6 in evidence.

1
2 THE COURT: You don't have a copy of the
3 subcontract here, because there is a reference here
4 again to paragraph 2. Okay? Is that the contract?

5 MR. COFFEY: It's a subcontract.

6 THE COURT: Mark it as Petitioner's Exhibit 7.
7 Give it to us and we will mark it.

8 THE CLERK: Marked Petitioner's Exhibit 7
9 in evidence.

10 (So marked.)

11 MR. MANGAN: Is that the subcontract?

12 MR. COFFEY: Yes.

13 THE COURT: All right.

14 MR. COFFEY: Mark this as Petitioner's
15 Exhibit 8.

16 THE CLERK: Petitioner's Exhibit 8 in evidence.

17 MR. MANGAN: I thought the subcontract was 8.
18 Am I wrong?

19 THE CLERK: The subcontract is 7.

20 Q What happened at the site between June 28th and
21 July 1, 1977?

22 A Another strike went up.

23 Q By who?

24 A Another strike went up by Teamsters Local 282.

25 Q Was there picketing?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes, 282 picketed the job site.

MR. MANGAN: I didn't get the date.

MR. COFFEY: June 28th to July 1st.

Q Since July 1st, have you had any people at the
JFK site?

A No.

Q And between mid-May of 1977 and July 1, 1977,
did you have any contacts with Mr. Ferrari by person or by
phone?

A Yes, consistently.

Q How many of these contacts were there?

A With Lou Ferrari?

Q Yes.

A At least ten.

Q And without going into the details of every
single one, were they all basically the same type of
conversation?

A Yes, all on the labor dispute.

Q What was Mr. Ferrari's comments to you and what
were your comments to him?

MR. MANGAN: Objection.

THE COURT: I will permit it.

A Mr. Ferrari wanted us to use a Teamster on our
trucks. I understand he even --

1
2 Q What did he say?

3 A They wanted us to sign with the Teamsters and
4 use the Teamster on our truck.

5 THE COURT: Which truck? Did he say which
6 truck; within the site, to the site, or what?

7 THE WITNESS: He didn't want any problems with
8 the Teamsters who threatened to strike the job site,
9 if our trucks on the job site were not driven by
10 Teamsters.

11 THE COURT: Is it the trucks coming from the
12 Navy Yard to the job site or trucks within the job site?

13 THE WITNESS: The Teamsters 282 stopped and
14 harassed all of the trucking from the very beginning
15 of the job site.

16 THE COURT: Including --

17 THE WITNESS: The outside owner-drivers which
18 came to the job site, 918 to the on-site drivers.
19 They wanted this work for themselves.

20 THE COURT: Including your shipments from the
21 Navy Yard to the site?

22 THE WITNESS: Including that shipment, as well.
23 They were concerned, once it entered the gate,
24 when the truck entered the gate, that they wanted
25 that --

1
2 THE COURT: What about shipments of a whole load
3 from outside into the gate, with one drop? Did they
4 want that work?

5 THE WITNESS: Yes.

6 THE COURT: They wanted to take over the gate?

7 THE WITNESS: They wanted to take the trucking
8 from the gate and drive it into the job site.

9 THE COURT: Don't you have an equipment and a
10 materials dump, a place where you keep your material
11 on the job site?

12 THE WITNESS: Sometimes it goes there. Some-
13 times it goes directly -- what we try to do is place
14 the material as close as it is actually physically
15 going to be installed.

16 THE COURT: Suppose you had a truckful of
17 material --

18 THE WITNESS: If we had a truckful of material,
19 we would take that material and bring it to the
20 various points on the job site.

21 THE COURT: So, the truck would make a number of
22 stops?

23 THE WITNESS: Make a number of stops. This
24 didn't happen all the time but it occurred.

25 THE COURT: I am concerned with the situation

1
2 coming from the outside and making one drop. Do you
3 understand that?

4 THE WITNESS: Yes.

5 THE COURT: Did they want that work?

6 THE WITNESS: Yes, initially they wanted it.
7 Eventually, they let that -- those trucks --

8 THE COURT: Not what you think. What did they
9 say or do with respect to those one-drop cases?

10 THE WITNESS: I am not in the best position --

11 MR. MANGAN: This all stems from a discussion
12 we had with Mr. Ferrari and June 28th and July 1st --

13 THE COURT: I am trying to clarify in my own
14 mind what he is saying.

15 MR. MANGAN: Your initial question was with
16 Ferrari, according to Mr. Hirsch, that Ferrari
17 wanted Active to use Teamsters on trucks and to sign
18 with Teamsters to use Teamsters on the truck and
19 your question was whether or not, whether he was
20 talking about on-site work or off-site work. We
21 still haven't gotten an answer to that question.

22 THE COURT: We are trying to get it.

23 THE WITNESS: There was a specific time in
24 the beginning of the job site when the Teamsters
25 wanted to take the truck that just came at the gate.

1
2 That was in the beginning.

3 Afterwards, they left us alone and I say,
4 afterwards because there was a period of time that we
5 may have made -- I'd say at least fifty drops coming
6 in, fifty truckloads came into the job site and in
7 the beginning they bothered us.

8 Afterwards, they let us alone on that and they
9 were harassing us with driving the trucks inside the
10 job site. So I don't know if I fully answered the
11 question.

12 THE COURT: There are three situations, as I
13 understand it.

14 One where it comes from the outside and there is
15 a single drop?

16 THE WITNESS: Yes.

17 THE COURT: As of now, they are not bothering
18 you about that?

19 THE WITNESS: Yes.

20 THE COURT: Second situation is where it comes
21 from the outside and there are one or two or more
22 drops at the worksite. Are they bothering you on that?

23 THE WITNESS: Yes.

24 THE COURT: They are insisting on that?

25 THE WITNESS: They insist on that.

1
2 THE COURT: The third case is where you pick
3 up from a dump within the job site and dump to another
4 spot?

5 THE WITNESS: Yes, you have the picture.

6 THE COURT: It's the second and third?

7 THE WITNESS: It's on the second and third.
8 At this time, not on the first. They demanded
9 initially, but not now.

10 THE COURT: I see.

11 MR. COFFEY: I have no further questions of
12 this witness, your Honor.

13 MR. MANGAN: Could I see your statement, please?

14 MR. COFFEY: Yes.

15 MR. MANGAN: Could I have a moment to read
16 this, your Honor?

17 THE COURT: Yes.

18 (Counsel reads document.)

19 THE COURT: Your allegation 5(V) on page 6
20 of your complaint, alleging that there is an intention
21 to require Active to assign the work "to, from and
22 at the JFK site" --

23 MR. COFFEY: That is 6, your Honor.

24 THE COURT: Page 6, V. I take it --

25 MR. COFFEY: This is in the petition?

1
2 THE COURT: The order to show cause. Are you
3 now trying to prove --

4 MR. COFFEY: It's "V" not Roman V.

5 THE COURT: Capital V, I am sorry. It says
6 from and at the JFK site. It's not any longer to the site?

7 MR. COFFEY: It's to the site. He is no
8 longer claiming that. It's only those that go in and
9 make a number of drops. The one-drop situation is
10 no longer applicable.

11 MR. MANGAN: Your charge deals with a period
12 May 23, 1977 and according to the testimony of
13 Mr. Hirsch, your Honor.

14 THE COURT: All right, you may cross-examine.

15 CROSS-EXAMINATION

16 BY MR. MANGAN:

17 Q Mr. Hirsch, with respect to your two jeeps,
18 have those two jeeps been on site since you commenced work?

19 A Shortly after.

20 Q And when you received truckloads from off the
21 premises, whether they come from your own location at the
22 Navy Yard or whether they come from other locations, brought
23 in by common carrier, and there is an unloading of those
24 materials at a single location, is it your practice, sir, to
25 have the transportation of those materials from that single

1
2 location, to the point on the site where the work is actually
3 going to be performed, transported on that jeep?

4 A No.

5 Q What is the means of getting the material from
6 the single location, where you have the materials dumped,
7 to the place where the work is actually going to be performed?

8 A By the jeep or small vehicle, the small vehicle.

9 Q So, you described that two trucks that are on
10 the site as two jeep types?

11 A They are jeep-type trucks.

12 Q So when I refer to the two jeeps, I am correct
13 in saying that those jeeps were used to transport all the
14 materials that were taken from one location to another
15 location on the site?

16 A It was part of their usage.

17 Q It was part of their use, but all of the
18 materials that went from this one location to other locations
19 were transported on the jeeps?

20 A No. As I stated before, the materials came in
21 from the outside and they went to various drop-off points on
22 the job site.

23 Q You said that was one means, and you also said
24 there was a dump at a particular single location?

25 A Yes.

1
2 Q If there was a dump at a single location, the
3 transporting of those materials from the single location to
4 multiple locations, where the work was actually going to be
5 performed, was it done on the jeeps?

6 A Yes.

7 Q And how many locations on the job site was
8 plumbing and fire protection work being performed by Active?

9 A How many points?

10 Q Yes. How many locations on the job site?

11 A We have in the plan, 22 points.

12 Q And over what area were those 22 locations
13 located?

14 A I am just guesstimating a half-mile.

15 Q And would you describe the type of material
16 that would be taken from a single location to these twenty-
17 one locations?

18 A Plumbers' tools, plumbers' equipment and
19 plumbing pipe.

20 Q What about the fire materials?

21 A And the men themselves.

22 Q What about the fire materials?

23 A And the fire, also.

24 Q What types of pipe would you be talking about?
25 What lengths?

1
2 A They had varied from small pieces to eighteen-
3 foot pieces.

4 Q And what weight would the variance run between?

5 A What weights?

6 Q Yes.

7 A Anywheres from 5 lbs. to several hundred pounds.

8 Q Pursuant to the question of Judge Weinstein,
9 you said there were two questions being raised by Local 282
10 from the period covered by the charge that was filed, and
11 that was the multiple drops and on-site work. You described
12 on-site work with respect to the multiple drops, when
13 you had either a common carrier or one of your own trucks
14 coming in to make multiple drops.

15 Would they make drops at each one of these
16 locations you referred to?

17 A Not to all twenty-two, but to two or three, yes.

18 MR. MANGAN: I have no further questions.

19 MR. COFFEY: I have no questions.

20 THE COURT: Thank you.

21 Next witness, please.

22 MR. COFFEY: Petitioner calls Barry Cohen.

23 MR. MANGAN: Do we have a stipulation from
24 general counsel that the off-sitework, that it is no
25 longer at issue? Is he conceding that?

1
2 THE COURT: He is not conceding that.

3 B A R R Y C O H E N , called as a witness, having
4 been first duly sworn by the Clerk of the Court, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. COFFEY:

8 Q What is your address, Mr. Cohen?

9 A 1709 East 4th St., Brooklyn.

10 Q Mr. Cohen, what do you do for a living?

11 A I am employed by Active Fire Sprinkler as an
12 outside super for the plumbing and fire protection work at
13 the JFK Airport.

14 Q How long have you been engaged at JFK Airport
15 in that capacity?

16 A Well, since March, at that site, but I have
17 been with the company for two years.

18 Q Can you tell us at what point you started to
19 get deliveries of pipe from private carriers?

20 A Yes, late in March, the private carriers from
21 Mead Pipe were bringing in the pipe from Lynchburg, Virginia.

22 Q During what period did that continue?

23 A That continued for about six weeks but it
24 stands -- the loads came up as the material was manufactured
25 and as we released it.

ASI

1
2 Q I direct your attention to the 22nd or 23rd of
3 March, 1977. Can you tell us what happened at that time?

4 A Yes, I was approached by a gentleman -- his
5 name is Mr. Carbone. He told me --

6 Q How do you know his name was Mr. Carbone?

7 A He introduced himself as Mr. Carbone and he told
8 me he was the Business Agent for 282.

9 At that time, he instructed me not to make
10 multiple drops and told me that I could only make one drop
11 with the truck that came onto the site.

12 At that time, I told him that I wasn't aware of
13 -- that that's what I was supposed to do and I would check
14 with my employer.

15 Q Who did you call?

16 A I called my boss, Morty Hirsch.

17 Q What were his instructions to you?

18 A I explained to him the situation and he told me
19 that we had no agreement with that Local and that I should
20 continue as I had planned.

21 Q What was your plan?

22 A To lay out the pipe in certain areas closest
23 to where the pipe would be installed on the site.

24 Q Okay. What happened on the following day,
25 which is the 23rd or 24th of March, 1977?

1
2 A The following day, Mr. Carbone returned to the
3 job and he saw that I was proceeding with what I was doing
4 yesterday. He told me that he couldn't do anything to me
5 but that he would get Ferrari because he knew what he had to
6 do.

7 Q Okay. During the period between March 23rd and
8 July 1, 1977, did you notice anything different in the way --

9 A Yes --

10 Q The way 282 regarded you?

11 A After the incident with Mr. Carbone, the shop
12 steward, Bill Coty --

13 Q He is a 282 --

14 A Yes, he is a 282 shop steward, employed by
15 Brady. He would follow around our vehicles, observe what
16 drops we made and make -- just observed, really. I don't
17 know if he took notes or what. Whatever he did.

18 Q Did that continue up until July 1st?

19 A Yes, it did.

20 MR. HANGAN: When?

21 MR. COFFEY: July 1st.

22 Q Can you tell us what happened -- did you get
23 any more vehicles on the site in April of 1977?

24 A In April of '77, we received a jeep-type truck
25 and a jeep pick-up truck which was used by the plumbing and

1
2 plumbers and steamfitters to get from the shanty area to the
3 place of installation of piping.

4 MR. MANGAN: What date was that?

5 THE WITNESS: In April.

6 Q And who did you assign to drive these jeep
7 trucks?

8 A I assigned one to the plumber and one to the
9 steamfitter.

10 Q Did you subsequently shortly after that change
11 your assignment?

12 A Yes, I did. I assigned both trucks to the
13 plumber because the composite -- we had a composite crew of
14 plumbers and steamfitters on the outside water mains.

15 Q So, at all times, since some time in April of
16 1977, these jeep trucks had been driven by your plumbers on
17 the site?

18 A Correct.

19 Q And are they members of Local 1?

20 A Yes, they are.

21 Q What do you use these jeep trucks for?

22 A We used the jeep trucks for transporting the
23 men and the small tools and materials from the shanty trailer
24 area to the place of installation of piping.

25 We usually used a jeep, maybe an hour out of

1
2 the seven-hour day.

3 In other words, in the morning from the trailer
4 to the place of installation, just before lunch, to come
5 back after lunch, to go back to the site and a quarter after
6 three to come in and lock up for the day.

7 Q That was all it was being used for?

8 A Yes.

9 Q Now, since April of 1977, have you been
10 receiving any deliveries from your home office, at the
11 Brooklyn Navy Yard?

12 A Yes, we usually receive a delivery every other
13 day of material, to keep the job moving.

14 Q How does that come in?

15 A That comes in on a larger-type truck, driven
16 by a 918 Teamster.

17 Q Does that make a single or multiple drops
18 on the site?

19 A Both. In some cases I made single drops and
20 in some cases I made multiple drops, depending on what was
21 on the truck.

22 Q Now, between April of 1977 and when this truck
23 began arriving, after July 1, 1977, did you notice any
24 contact between a driver of the truck and anybody else, as
25 it came through the gate?

A55

1
2 A Yes, the shop steward for 282 challenges
3 everybody who drives a truck on the site for a union book, to
4 produce a union book.

5 Q Did you hear him say anything else to your
6 driver?

7 A Yes, he would tell the driver that he is only
8 allowed to make a single drop. He also told me that.

9 Q How many occasions?

10 A Multiple. Maybe twenty-five, fifty times.

11 Q Now, between April and June 15, 1977, were there
12 other occasions in which Mr. Coty, the shop steward of 282,
13 said something else to you?

14 A Yes, in conversation, he had mentioned to me,
15 "Why don't you put on a 282 driver, so we won't any problems
16 on the site?"

17 Q How many times has he said that to you?

18 A Two or three times.

19 Q Between what period?

20 A From the time that we were having the trouble,
21 until maybe up until just three weeks ago.

22 Q The last time was three weeks ago?

23 A Yes.

24 Q What happened on June 16, 1977?

25 A June 16 was when the Teamsters went on strike.

1

2

Q What did you see?

3

4

A They put up a picket line in front of the gate and they carried signs: "John T. Brady, Unfair."

5

6

Q Did any other employees engage in the work stoppage?

7

8

9

A Yes, all of Brady's employees, all of those individuals -- the excavators' employees and one of my own employees, a Local 15 operating engineer.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Did you see who the pickets were?

A Yes.

Q Who were they?

A They were the shop steward --

Q 282?

A The 282 shop steward and all of Brady's truckdrivers and the shaper on the job and the business agent.

Q The shaper on the job? When did he first arrive

A When did he first arrive? Right around the time of the first strike, approximately the 16th of June.

Q Was he on the job before that time?

A Possibly. I -- if he was, I am not sure. It's possible that he was.

Q Now, on June 17, 19 -- on June 16, 1977, where were the pickets standing?

A They were at the front gate.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Is this the gate that all the people used on the site?

A It's the only gate on and off the property.

Q Did you see the signs they carried?

A Yes.

Q What did they say?

A It says "John T. Brady Unfair to Local 282."

Q I direct your attention to June 17, 1977, the day after the first strike. Did you have a conversation with anyone on that date?

A Yes, the day after the strike, the Teamster shop steward, Bill Coty, brought over a fellow with him who was shaping the job, who was at that day put on the payroll by Brady. That's what ended the first strike.

He brought him over and asked me what I wanted him to do.

Q Coty asked you what you wanted the shaper to do?

A At that time I told Coty I would have to check on it and I called Donald Sclafani, the business agent of Local 1 and I asked him if I should put the Teamster on the plumber's jeep.

He told me it was the plumbers' work and that it was a tool of the trade and that my company had an agreement with Local 1 and that I should absolutely not do it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q And what did you do then?

A I went back and told Coty that I felt it was a jurisdictional dispute, and that I didn't want to get involved in it, I couldn't help him settle it so that it would have to be taken between the unions to some higher power.

Q Was Active ever present at a meeting of the Trade Board?

A No. I was approached by Lou Ferrari and asked to go to the Trade Board meeting but I declined to go because I had no agreement with 282 and I felt that I was only to speak for the representative -- or represent the unions who were working for my company.

Q What happened on June 28, 1977?

A The 23th, we had another strike by the Teamsters.

Q Were the pickets at the same place?

A Yes, they were.

Q Were there any other work stoppages at the work site?

A Yes, the same thing happened again. Excavators went out again, the operating engineers and all of Brady's forces; carpenters, laborers.

THE COURT: We will take an adjournment for just a minute. Stay right where you are.

(Short recess taken.)

1
2 BY MR. COFFEY:

3 Q Since July 1st, have you had the people working
4 on the site?

5 A No, we haven't.

6 Q Tell me, the materials that you have to carry
7 around the site in that jeep truck, I heard Mr. Hirsch say
8 they had big pieces of pipe and other things in there; is that
9 true, or was he mistaken about that?

10 A I think he is mistaken about that.

11 Q What kind of materials do you have in these
12 jeep trucks?

13 A Lead, oakum, small pipe fittings -- maybe a
14 five-foot length of pipe; hand tools. That's about it.

15 Q Would he be the best -- would he have the best
16 knowledge of this or would you?

17 A I feel I would because I'm on the job.

18 Q How many plumbers did you have employed at the
19 site?

20 A Ten.

21 Q And they are all out of work now?

22 A Two steamfitters, one operating engineer, one
23 helper, yes. I'm the only one that is still being paid.
24 Altogether, fourteen of us; fourteen people.

25 Q Since Active has gone from the site, have all

1
2 the other trades and people who have been engaged in work
3 stoppages, have they returned?

4 A Yes, they have continued working.

5 Q Has the picket line been taken down since
6 July 1st?

7 A Yes, there is no picket line.

8 MR. COFFEY: No further questions, your Honor.

9 CROSS-EXAMINATION

10 BY MR. MANGAN:

11 Q Mr. Cohen, you heard Mr. Hirsch testify about
12 the twenty-two locations that were at the work site, where
13 Active was engaged in performing its work?

14 A Yes.

15 Q And you also heard Mr. Hirsch testify with
16 respect to the fact that when outside trucks came into the
17 job site, that they would either drop at a single location or
18 multiple locations, and he said, if it was multiple locations
19 that it was two or three; is that correct?

20 A That's correct.

21 Q Do you agree with that?

22 A Yes, it was at my discretion where those drops
23 would be placed and how many were to be made.

24 Q Do you also agree, I assume, that if it was a
25 single location that the drop was made, that distribution of

1
2 whatever was dropped at that single location to the twenty-
3 two locations was performed by the jeep vehicles on the site;
4 is that correct?

5 A To -- yes, to a large extent, that is correct.

6 Q What would be incorrect about that statement?

7 A Can I explain fully?

8 Q Yes.

9 A My set-up of the drop points was to bring
10 material to the closest location --

11 Q I am not asking you what you like to do. I am
12 asking you a specific question with respect to a single drop
13 being made on the site, and the distribution of the material
14 to the points of locations on the site.

15 A I understand.

16 Q If there was a single drop, the distribution
17 to those twenty-two locations would be on the jeep vehicles,
18 would they not?

19 A No. They would be made by the cherry picker,
20 which would go to the drop and move in two directions and
21 implant the piping into the ground from the twenty-two drops.

22 Q From the twenty-two drops? I am not talking
23 about from the twenty-two drops. I am talking about how it
24 got from the single location to the twenty-two drops.

25 A It would come off the site to one of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

twenty-two drops and make a single drop, okay?

Q We are at the single drop and I want to know from that single drop, was the jeep or weren't the jeeps used for the distribution of those materials from that single drop to the twenty-two locations?

A Only if the material was in the storage area, yes, okay?

Q Mr. Cohen, there is a drop at a single location and that drop, the materials involved in that drop have to go to five other locations; okay?

That's where they are assigned to go.

How do they get from the single location to the five locations?

A Either by jeep, the cherry picker, or by hand carried, by the personnel.

Q The materials that are being used in the performance of the plumbing, as well as fire protection work at this location involves heavy pipe, for the most part?

A Yes, it does.

Q It involves lengths of pipe eighteen feet long?

A Yes, it does.

Q And the distribution of that pipe from the single location to the multiple locations, was performed by the jeeps, was it not?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No, it was performed by the cherry picker.

Q You said the cherry picker was used from the one location -- the multiple locations to the point where it was being put into the ground?

A The jeeps are not capable of lifting an eighteen-foot length of duct pipe that weighs a thousand pounds. I'd like to see a jeep that can lift that.

Q How about valves?

A Valves in the storage area were transported from the storage area to the place of installation by the jeep. That is true.

Q You also testified that during the period March, right up until July 1, that any materials that came from off site to on-site were either, at your discretion put into a single location or distribution on site to the multiple drop, or were taken from off site to multiple location drops on site; isn't that correct?

A The way the question is -- give me one question. I will give you one answer.

Q There were two ways from March until July 1 in which the distribution took place. It was either single drop, thereafter being transported to multiple locations on site, and the second procedure was to take the truck that brought the materials on site and for that truck to be

1 utilized to make multiple drops on site?

2 A Yes.

3 Q That was done regardless of the picketing that
4 took place on June 16 or picketing that took place on June 28?
5 You continued to use the same procedure?
6

7 A Yes.

8 Q And the -- when you spoke to Mike Carbone, he
9 told you that as far as 282 was concerned, it had a contract
10 with Brady, right?

11 A That's correct.

12 Q And his contract, the 282 contract with Brady
13 provided that any subcontract on the premises was limited
14 when he brought in his own materials, was limited to a single
15 drop; is that right?

16 A That's what he stated to me, yes.

17 Q And he told you he couldn't do anything to
18 Active but he had a contract with Ferrari, which was Brady,
19 and his conduct would be with Brady?

20 A That is correct.

21 Q And Carbone and 282 would be familiar with what
22 was going on with the job site because Coty, the job steward
23 of Brady was watching what came on the job site for Active as
24 well as what was going on and how the activity was taking
25 place on the job site with the multiple drops?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Correct.

Q Now, the picket signs that appeared on June 16 was a picket against John T. Brady?

A Correct.

Q By 282?

A Yes.

Q The picketing took place at the gate which was the only gate for entrance and exit to the site?

A Yes.

Q And as far as the picketers, that was limited to employees of Brady or representatives of 282?

A Yes.

Q Any other person that failed to perform work to your knowledge, refused to cross that picket line?

A Yes.

Q That is true whether it be employees of Active or employees of anyone of the other subcontractors that were on the site?

A Yes.

Q Those answers to the picketing that took place on June 16 would be the same answers, if I asked you with respect to the picketing that took place between June 28 and July 1st?

A Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MANGAN: I have no further questions.

MR. COFFEY: I have no further questions,
your Honor.

(continued next page)

1
2 MR. COFFEY (Cont.): Petitioner calls Louis
3 Ferrari.

4 L O U I S F E R R A R I , called as a witness, having
5 been first duly sworn by the Clerk of the Court,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. COFFEY:

9 Q Mr. Ferrari, would you state your address,
10 please?

11 A 1 Fisher Drive, Mount Vernon, New York.

12 Q What do you do for a living?

13 A I am a general superintendent for John T. Brady
14 Company.

15 Q How long have you held that position?

16 A I am with the company thirty-five years.

17 I am general super for sixteen years.

18 Q During 1977, has Brady had any contract with
19 the U.S. Postal Service?

20 A Yes, sir.

21 Q To do what?

22 A Mail -- build the mail facilities at JFK.

23 Q In what capacity was Brady retained by them?

24 A General contractor.

25 Q Have you subcontracted any of the work?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q Have the firms that have been employed at the site since March, can you tell us which ones they are, where they are located and what they do?

A Well, there is Active Sprinkler Company. They have been doing the plumbing and heat -- plumbing and site work.

There is also Bermar Electric. They do the electrical work. All the electrical work.

Novid Excavating.

Q Where is Novid located?

A In Brooklyn.

Q How about Bermar?

A In Queens.

Q Now, you have an agreement with Local 282 IBT?

A I have.

Q The Respondent's 1, your agreement with Local 282 IBT -- this is the one I gave you this morning?

A It's not signed. It's the same thing.

Q That is your agreement?

MR. MANGAN: Do you have a signed contract?

THE WITNESS: I brought it here.

THE COURT: It's not necessary.

Q Pursuant to that agreement, do you employ any

employees who are members of Local 282?

A Yes, sir.

Q Who are they?

THE COURT: Let's move to the central issue. What does he know about this particular dispute? We have enough background.

MR. COFFEY: I wanted to get into what these particular men do, your Honor.

THE COURT: Let's move to the --

MR. COFFEY: That they don't do the work for any subcontractors.

THE COURT: I understand. Let's move ahead.

MR. COFFEY: Can I get into that?

THE COURT: Go ahead.

Q Mr. Ferrari, do any of these 282 men do any of the truckdriving work for any of your subcontractors?

A No.

Q Is it true that Bermar Electric and Active Fire Sprinkler use their own drivers at the site?

A Yes.

Q Can you tell us what happened on May 21, 1977?

A May 21 --

Q Did you have a conversation --

A I got a telegram.

1

2

Q Did you have a conversation with Mr. McFarland?

3

A I had a conversation with Mr. McFarland.

4

Q Who is he?

5

A He is an agent for Local 282.

6

Q What did he say to you?

7

A He said that I have to pay the seventeen days --

8

you say May?

9

Q May 21st.

10

A He said I have to put a Teamster on the

11

plumber's truck or I told him I would not. He said, "The man

12

is going to be going to be shaping up here. Somebody has to

13

pay him and you are going to have to pay him," and I said I

14

wouldn't.

15

Q Exactly what did Mr. McFarland say to you on the

16

21st, again?

17

A He said, "I have to put a Teamster on."

18

Q On your payroll?

19

A On my payroll, because the plumber would not put

20

him on.

21

Q And how long would you have -- did he say how

22

long you would have to keep him?

23

A He told me the man would be shaping up every day.

24

Q Did he say under what conditions you wouldn't have

25

to have him on your payroll any more?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Would you repeat that, please?

Q Did he say under what conditions you wouldn't have to have him on the payroll?

A If I put a Teamster on my plumber's truck, he wouldn't be on my payroll. They have a truck and a jeep. The jeep was not contested at that time.

THE COURT: They had a truck?

THE WITNESS: And a jeep.

Q Was it a jeep truck?

THE COURT: How about that, Mr. Cohen? Was it a jeep truck or a truck?

MR. COHEN: We have a jeep and a jeep pick-up.

THE COURT: Is it a panel truck?

MR. COHEN: They are both jeeps. One has a flatbed, one a Willy's pick-up.

THE WITNESS: One is a Jeep and called a Jeep and the other is a truck.

THE COURT: Is the Jeep only used for passengers or equipment only?

MR. COHEN: The tools, lead, oakum on both.

THE COURT: And the truck is used for what?

MR. COHEN: Also it would be used for flanges on the outside.

THE COURT: They only wanted a Teamster on it?

1 THE WITNESS: They were only interested in one.

2 THE COURT: Later did they mention two?

3 THE WITNESS: They only mentioned one to me.

4 THE COURT: How come you didn't ask for two?

5 MR. MANGAN: Well, I assume, your Honor, based
6 upon the testimony, I think I will be able to show this
7 to the Court, that there is provision in the contract
8 for the use of on-site trucks by the sub, as long as
9 that on-site vehicle is limited to transporting tools
10 or men and that the single Jeep, which was not a
11 flatbed, was used for that purpose or could be used
12 for that purpose, but the flatbed is not being used for
13 that purpose because it's being used for transportation
14 of materials and that's why it's limited to one man.

15 THE COURT: I understand.

16 BY MR. COFFEY:

17 Q Did Mr. McFarland say under what conditions
18 you would not any longer have to have the Teamster on your
19 payroll?

20 A If he was accepted, if I put a Teamster on the
21 truck, he would -- everything would be all right on the
22 plumber's vehicle.

23 Q Did Mr. McFarland say that you would have to
24 pay him until Active hired him?
25

1
2 A Yes, I would have to pay him until Active hired
3 him.

4 Q Now, from May 21st to June 15, 1977, did any
5 Teamster come to the site?

6 A Yes.

7 Q And what did he do when he was there?

8 A On June 15?

9 Q Between May 21st and June 15.

10 A They kept coming on the site and telling me when
11 I am going to put a Teamster on the job. There was a shaper
12 there every single workday.

13 Q I address your attention to June 15, 1977. Did
14 you get a letter on that day?

15 A I got a telegram.

16 Q What did the telegram say?

17 A To appear at the Trade Board meeting at
18 175 Linden Boulevard, Teamster Local 282.

19 Q When was that scheduled for?

20 A 10:00 o'clock in the morning.

21 Q On the following day?

22 A Following day.

23 Q Did you go to that meeting?

24 A I went.

25 Q Who was present?

1

A Joe Fader, Paul O'Brien.

2

Q Who were they?

3

A From the contractors Trade Board.

4

Q Who else?

5

A Mr. McFarland; Mr. Sasso.

6

Q Who is Mr. Sasso?

7

A Mr. Sasso is Vice President of the Union Local

8

282 and Bill Coty.

9

Q Who is he?

10

A He is a former steward on my job at JFK.

11

Q For 282?

12

A For 282.

13

Also, Emmins. I don't know his first name. He was a Teamster that shaped up every day on the job.

15

Q What was the -- what did the union -- what was

16

the union's position at the Trade Board meeting?

17

A They said that -- they wanted me to put a

18

Teamster on and pay the man on the job seven days back pay.

19

Q Is Brady a member of the Trade Board?

20

A No.

21

Q Is there a provision in the contract relating

22

to the Trade Board solving of disputes between Brady and 282?

23

A I think there is a provision of the Teamster's

24

contract, yes.

25

A 75

1
2 Q When you say Teamster's contract, you are
3 referring to 282?

4 A 282.

5 Q Did you have any dispute with the Teamsters
6 at that time?

7 A I never had a dispute with the Teamsters.

8 Q What was the decision of the Trade Board that
9 day?

10 A After a long discussion, the 282 -- Mr. Joe
11 Fader of the Trade Board said I have to put a Teamster on the
12 plumber's vehicle.

13 Q And was there any decision made about the
14 seventeen days back pay?

15 A Mr. Fader said he had no part of that; made no
16 provision for that.

17 Q On June 16, 1977, did you go back to the site?

18 A I went back to the site.

19 Q Did you see anybody when you got there?

20 A Yes, pickets.

21 Q Who was picketing and where was the picketing?

22 A At the gate.

23 Q Who was picketing?

24 A Mike Carbone, McFarland, Tony -- my two
25 Teamsters, three Teamsters.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Who were they?

A Ferminello, Emmins and Coty.

Q Emmins hadn't been hired by you at that point,
had he?

A No, he hadn't been hired at that point.

Q But Ferminello and Coty were his employees?

A They were my employees.

Q Did they carry signs?

A They carried a sign.

Q What did the sign say?

A "John T. Brady Unfair to Local 282."

Q Later that day, did you have a chance to call
your office?

A Yes, I went to the office.

Q Did you speak to anyone there?

A Mr. Stevens, the Vice President of the company.

Q What was the result of that discussion?

A After the discussions, we decided to pay the
seventeen days back pay to the man so we could go back to work
and keep the man on the payroll after that.

Q Did you have occasion to call anyone?

A Yes, I called Mr. Sasso.

Q Is that the same Mr. Sasso that was at the
Trade Board?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes, the same Mr. Sasso.

Q What did you say to him and he say to you?

A I told him I couldn't get anybody until Monday and I would pay the man Monday and he said, "Okay, the strike is off."

Went back to work the next day.

Q Did you say you would pay him for the seventeen days back pay?

A And put him on the payroll, yes, sir.

Q Those seventeen days represented the seventeen days he shaped?

A Yes, sir.

Q You had put him on the payroll?

A Yes.

Q What did Mr. Sasso say?

A At that point, the strike was over. We could go back to work the next morning.

Q Was it on June 17 that you sent this letter to Active concerning the problems you were having?

A Yes, I did. In fact, my company did.

MR. COFFEY: Let the record show we were referring to Petitioner's 4.

Q Now, between May 21st and July 1st, did you have any conversations with Mr. Morty Hirsch, concerning this work?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q What was your conversations with him?

A I was trying to get it together and to go back to work, put the Teamster on the truck.

Q Yes?

A Yes.

Q What was his position?

A His position was that he tried but the plumber's union wouldn't allow it.

Q Have you had any conversations with anyone from Local 1 of the plumbers?

A Yes.

Q Between May 23rd and July 1st?

A Yes, Mr. Sclafani.

Q How many conversations did you have with him?

A Three or four.

Q What were they concerning?

A They said that if we put a Teamster on the plumber's truck that then the plumbers wouldn't go to work.

Q I direct your attention to June 24, 1977. Did you receive a call at that time?

A If I am right, that's the day that Mr. McLaughlin called me --

Q That's Friday, June 24th? You had a call from

1
2 Mr. Sasso on that date?

3 A Oh, yes. He didn't want any more shape-up teams.
4 He wanted him on the plumber's truck. He demanded I put him
5 on the truck.

6 Q What were his words to you?

7 A What was that?

8 Q What were Mr. Sasso's words to you? What was
9 the entire conversation between you and Mr. Sasso at that time?

10 A I have my dates mixed up a little bit; that's
11 all.

12 Oh -- he said why did I go to the N.L.R.B.?
13 The dates are mixed up.

14 Q This is Friday, June 24th?

15 A The first thing I got a call from
16 Mr. McLaughlin in the morning and he told me to call
17 Mr. Sasso. He was looking for me to talk to him.

18 Q I am talking about the conversation with
19 Mr. Sasso on Friday, before any of the picketing started.
20 Did you have a call from him?

21 A Yes.

22 Q Before you ever filed any charges with the
23 Labor Board?

24 A Right, right.

25 Q What did he say at that time?

1
2 A He told me to put -- I think he told me that we
3 are going to strike Monday morning if I don't put a Teamster
4 on the truck Monday morning, driving a truck.

5 "Monday morning we will go on strike."

6 I told him -- Friday morning he told me he was
7 going to strike. I told him I couldn't do anything until I
8 reached somebody and wanted time until Wednesday morning.

9 Q What did he want to do to avoid the strike?

10 A He wanted me to put a Teamster on the truck,
11 driving, not shaping up the job.

12 Q He wanted him actually driving the truck?

13 A Driving the truck. I explained to him I couldn't
14 do it because the plumbers would walk off the job.

15 Q You asked him for some time?

16 A I asked him for time until Wednesday, because
17 I couldn't contact anybody until after the weekend.

18 MR. COFFEY: I beg your indulgence for a moment,
19 your Honor.

20 Q On Monday, June 27th, on advice of counsel, did
21 you come to the N.L.R.B.?

22 A My office told me to go with my attorney to the
23 N.L.R.B., which I did.

24 Q Is this the charge that you filed at that time?

25 MR. COFFEY: Excuse me, let me get that

identified.

Q Can I have that back for a moment?

A Yes, sir.

MR. COFFEY: This is Petitioner's 9.

THE COURT: Is that attached to your papers?

MR. COFFEY: No, this is another charge. It's in the process of being withdrawn.

Brady informed us Brady is withdrawing his charge. We want to put it in as part of the sequence of events.

THE CLERK: Petitioner's Exhibit 9 marked in evidence.

Q This is a charge you filed with the N.L.R.B. on June 27?

A Yes, that is it.

Q Okay, now, on Tuesday, the 28th of June, 1977, did you get a call from Mr. McLaughlin, your superintendent at the JFK site?

A June 28th, yes. He told me the job was on strike.

Q Did he say anyone wanted to talk to you?

A Excuse me. He said, "Mr. Sasso is looking for you. He wants to talk to you."

So I called up Mr. Sasso.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q What did Mr. Sasso say?

A Mr. Sasso say, "Why did you go to N.L.R.B.?"

Q Did he say anything else?

A On the advice of my attorney and my employer, I had to do it.

He said, "You are now on strike."

Q When he said, "Why did you go to N.L.B." did he say anything else in that sentence?

A I don't recall. All I know is, "Why did I go to N.L.R.B.?" and I told him that on advice of my attorney, we had to go down there and make the charge.

MR. COFFEY: Could I have this marked as Petitioner's Exhibit 10 for identification?

THE COURT: That's the statement of this witness? Just for identification.

THE CLERK: Petitioner's Exhibit 10 for identification, so marked.

(So marked.)

Q I show you this document, Mr. Ferrari. Is this a statement that you signed?

A Yes, I did.

Q You swore to that on the 28th day of June?

A Right.

He hung up; is that what you want me to say?

Q I direct you to page 2 of the document to --

MR. MANGAN: Is this whole document going to be offered or received for the purpose of refreshing the recollection of the witness?

THE COURT: No, it's being used to refresh, after being marked for identification.

Q You read that sentence?

A Right.

Q Did Mr. Sasso say anything else to you?

After reading this, does that refresh your recollection as to what Sasso said to you on the phone?

A Yes.

"Why did you go to N.L.R.B., instead of putting a Teamster on the truck?"

Q On whose truck?

A The Teamster's truck.

Q Later in that conversation, you said that you couldn't do that.

He said, "You are on strike"?

A I told him because of the advice of my attorney and employer, I had to go to the N.L.R.B. and he just said, "You're on strike" and hung up.

Q Did you go to the site on that day?

A Kennedy, yes; JFK.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Did you see anything when you got there?

A I saw pickets out.

Q And who was picketing?

A That day there was Tony Ferminello, Bill Coty
and Ermins.

Q Where were they picketing?

A At the gate.

Q Is that the only gate to the premises?

A Gate No. 5 is the only gate going to the
premises.

MR. COFFEY: I beg your indulgence for a
second, your Honor.

I am looking for some Polaroid pictures, your
Honor. Somehow they have been misplaced.

THE COURT: The Reporter wants to take a short
break. Why don't we give him a break while you're
looking for your pictures?

(Recess taken.)

(continued next page)

Q Did you have occasion to have any pictures taken of the pickets?

THE COURT: Mark them in evidence.

MR. COFFEY: This is 11 and 12.

THE CLERK: Plaintiff's Exhibits 11 and 12, in evidence.

(So marked.)

THE COURT: All right, next.

Q Did Brady send the letter --

THE COURT: We have all of that. Let's move ahead.

MR. COFFEY: All right.

Q When the -- did you have any conversation with Mr. Sasso on or about June 30th?

A June 30th, yes.

Q What was the conversation between you at that time?

A I told him we were suspending the plumbing and I wanted to go to work on the 1st of -- whatever the day was, 1st of July.

He says as long as it is suspended, nobody using that truck, everybody else could go back to work.

So I contacted the plumbers by his agent and told him what I was going to do.

1
2 I said, "You don't use the truck, the plumbers
3 are allowed to work," and the business agent said, "No, they
4 cannot go to work. So you suspend the plumbing contractor."

5 Q Since that time, during the picketing between
6 June 28th and July 1st, did any of your employees work in a
7 work stoppage?

8 A They all did.

9 Q Any employees of any subcontractors engage in
10 the work stoppage?

11 A Subcontractors?

12 Q Yes.

13 A All the subcontractors except the plumber.
14 They kept on working.

15 Q By the plumber, you mean Active?

16 A Active.

17 Q Since July 1st, all of your employees were
18 working?

19 A Yes.

20 Q Has there been any problem since July 1st?

21 A It's not being run right. It's been delayed.
22 We can go only so far, two or three days, and stop. There is
23 no underground piping.

24 Q Who are the only people who can put in the
25 underground piping?

1

2

A Active.

3

Q Did Brady put plumbing in?

4

A No.

5

Q Always subcontracted?

6

A Always subcontracted.

7

Q Have any employees of 282 driven any trucks for

8

any subcontractors?

9

A Not that I know of, no.

10

THE COURT: Their position is that as long as

11

that truck isn't used to transport anything on the

12

site, they would have no objection to Active continuing

13

is that right?

14

THE WITNESS: The way I understand it, that's

15

the way it's supposed to be.

16

As long as they don't use the vehicle, they can

17

go to work.

18

THE COURT: They can use the other vehicle to

19

transport people and tools?

20

THE WITNESS: I don't know if that's so. They

21

haven't told me not to but I don't know if that's so.

22

THE COURT: Is this your last witness, for the

23

Petitioner?

24

MR. COFFEY: No, I have two more, very short.

25

That's all with this witness.

THE COURT: You want to cross-examine?

MR. MANGAN: Just briefly, your Honor.

CROSS-EXAMINATION

BY MR. MANGAN:

Q Mr. Ferrari, you had a conversation with Mr. Sasso on June 24th and at that time Active continued to be making drops as they had been making the drops prior to the Trade Board decision on June 16th; is that right?

A Right.

Q So that between June 16th and June 24th, nothing had changed from the way it had existed prior to June 16, even though there had been a decision by the Trade Board saying that there was a violation of the contract?

A That's right, they continued.

Q And the Trade Board decision on June 16, was that Local 282, pursuant to the terms and conditions of its contract with Brady, was correct in its position, saying that any work on the job site had to come, other than the first drop, had to come under the terms and conditions of that contract? Wasn't that the ruling of the Trade Board?

A That's the ruling of the Trade Board.

Q And that was the ruling that was told to you and other representatives of Brady on June 16, by Mr. Fader?

A I was only --

1
2 THE COURT: Do not answer that. It is
3 repetitive.

4 Q On June 24th, you spoke to Sasso and Sasso said
5 that things are continuing the same way as they were prior to
6 the decision of the Trade Board and he was going to put you
7 down on strike?

8 MR. COFFEY: Objection, your Honor. There has
9 been a question raised about the U.L.R.B.

10 THE COURT: Forget about it. Forget it.
11 Let's move ahead.

12 Q The dispute, as presented to you, Mr. Ferrari,
13 on June 16th or prior to June 16th, by representatives of
14 Local 282, was limited to the use of this vehicle on the
15 site, to transport materials from one location to another
16 location?

17 THE COURT: What do you want him to do? Change
18 his answer? He said yes.

19 MR. MANGAN: I want him to limit it to the
20 on-site --

21 THE COURT: We established that. Let's move
22 ahead.

23 MR. MANGAN: I have no further questions.

24 THE COURT: Step down, sir. Thank you.

25 Next witness.

MR. COFFEY: General counsel calls

Mr. McLaughlin to the stand, the Petitioner.

ROBERT MCLAUGHLIN, called as a witness,
having been first duly sworn by the Clerk of the Court,
testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q What do you do for a living, Mr. McLaughlin?

A I am a Superintendent in construction.

Q And who do you work for?

A I work for the John T. Brady Construction
Company.

Q By the way, give your address, please.

A My address is 3 Garden Place, Pelham Manor,
New York.

Q Where are you currently working at this time?

A I am working at the United States Postal
facility for mail handling at the JFK Airport.

MR. COFFEY: Okay, mark this Petitioner's 13A
through G.

THE COURT: What are they?

MR. COFFEY: These are his daily worksheets
for various dates; June and July.

THE COURT: Just mark it 13.

1 THE CLERK: Petitioner's Exhibit 13 in evidence.

2 (So marked.)

3 Q Are these your daily worksheets out at the job?

4 A YES, they are.

5 Q Now, I address you to the first one. It's
6 June 16, 1977.

7 Are these completed in the ordinary course of
8 business?

9 A Yes, they are.

10 THE COURT: What are you going to establish with
11 them?

12 MR. COFFEY: Which particular employees worked
13 and which didn't on the day of the strike.

14 THE COURT: For what reason?

15 MR. COFFEY: That other contractor employees
16 engaged in work stoppage.

17 THE COURT: There is no question about that.
18 I will assume that is the case.

19 MR. COFFEY: That Berman and Brady's employees
20 did not work on the days of the picketing?

21 THE COURT: Of course.

22 Q I address your attention to June 28, 1977.
23 What happened on that day?

24 A On the morning of June 28th, at approximately
25

1
2 9:30 A.M., I received a telephone call from Mike Carbone of
3 Local 282 Teamsters and he asked if I would get the working
4 Teamster foreman, Mr. William Coty, to get him to the telephone.

5 I told him, Mr. Coty was out in the field at the
6 time and I would have to send someone out to reach him, and
7 he said he had Mr. Sasso there and Mr. Sasso would like to
8 speak to me.

9 I got on the phone and Mr. Sasso asked me why
10 someone went to the N.L.R.B. and I told him I knew absolutely
11 nothing about it and, so, he then asked me to please get in
12 touch with Lou Ferrari and have Lou Ferrari call him at his
13 office right away.

14 I then called Mr. Ferrari in New Rochelle, gave
15 him the message for Mr. Sasso and asked him to call
16 Mr. Sasso right away, because it sounded to me very much like
17 there was some sort of action being taken against the job
18 site.

19 Q Did you have a conversation with Mr. Coty later
20 that morning?

21 A Yes, I got the message out to Mr. Coty that
22 Mr. Carbone would like him to come to the phone. He did come
23 in out of the field and he called Mr. Carbone.

24 I was not present when they had the telephone
25 conversation but when he finished, he came to me and said

1 that he had instructions from his office that -- from Local 282
2 -- that they were going to go on strike and that was the only
3 information that he had at that time.
4

5 Q What were his exact words?

6 A "We are going to strike the job."

7 Q Okay, now, what happened at that time? Did you
8 have any further conversation with Mr. Coty?

9 A At that particular time, I said I checked with
10 my concrete superintendent and asked him what our disposition
11 of our concrete trucks are, because our concrete trucks are
12 driven by 282 men, Teamsters, and if they put up a picket line
13 and a truck came in, we wouldn't get it in.

14 We had one truck on the road and I asked and
15 checked if we could get permission to let that truck go
16 through, before they stopped everything at the gate.

17 Q What did they say?

18 A They got permission to let that truck through
19 and we cancelled the balance of the order.

20 Q Who told you you had permission to put one more
21 truck through?

22 A Mr. Coty.

23 Q Do any of your 282 employees drive trucks for
24 subcontractors at the site?

25 A No, they do not.

1

2

Q Have they done so in the past?

3

A No.

4

5

MR. COFFEY: That's it for this witness, your Honor.

6

MR. MANGAN: No questions.

7

THE COURT: All right, next witness.

8

MR. COFFEY: The last witness we have is Donald

9

Sclafani.

10

11

(continued next page)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

D O N A L D S C L A F A N I , called as a witness,
having been first duly sworn by the Clerk of the Court,
was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q Would you tell us your address, Mr. Sclafani?

A 83-17 89th St., Woodhaven, Queens, New York.

Q What do you do for a living?

A I am a business agent for Plumber's Local 1,
United Association.

Q Do you have a collective bargaining relationship
with Active Fire Sprinkler?

A Yes, we do.

Q And are members of your organization working for
Active Fire Sprinkler at the JFK site?

A Yes.

Q And do your men use any vehicles on that site?

A Yes, we do.

Q What do they do?

A They use the Jeep and Jeep pick-up.

Q What do they use it for?

A They use it for carrying material, carrying
themselves, the employees, carrying tools of the trade -- such
as lead and oakum, which is used to join the pipe together --

1
2 and that's about what they use it for.

3 To and from the job, they use their own
4 transportation to the shanty, to the site.

5 Q Did you have a call from Mr. Ed McFarland of
6 Local 282 in late May of 1977?

7 A Yes.

8 Q What did he say to you at that time?

9 A Well, he was claiming jurisdiction of the
10 driving of the vehicles on the job.

11 Q Is that what he said?

12 A Yes.

13 Q Did you have a conversation with Mr. Ferrari of
14 Brady on the phone the following day, after your call from
15 Mr. McFarland?

16 A McFarland?

17 Q Yes.

18 A Yes.

19 Q What was that about?

20 A That was about -- well, Mr. Brady had asked me
21 to put a Teamster on the truck.

22 Q On what truck?

23 A On Active's truck or Active's Jeep on the job.
24 I said, "No, I consider that a tool of the trade," and further
25 on in the conversation he had said to me that, "Active should

1
2 sign an agreement with 282."

3 Q Did you also have another --

4 THE COURT: When was this conversation?

5 THE WITNESS: This conversation was in late May
6 or early June. I don't know what was the date you
7 said. I don't remember the date. Dates I don't
8 remember. I remember about, approximately.

9 Q In that conversation, did Mr. Ferrari mention
10 Mr. McFarland?

11 A Yes. He said the next day, Mr. McFarland was
12 coming to the job, would I meet him on the job, and I said,
13 "Yes, I would."

14 Q On the same day you spoke to Mr. Ferrari, did
15 you have occasion to call Mr. McFarland again?

16 A Yes, I called Mr. McFarland the next day and
17 arranged a meeting at a diner near the job site.

18 Q Did you make that meet?

19 A Yes.

20 Q What did you say to him and what did he say to
21 you at that time?

22 A At that time, Ed McFarland was claiming
23 jurisdiction of the trucking. If it's jurisdiction, it should
24 go to International's. He said my claim really is with Brady
25 because Brady was the general contractor on the job and he can

1
2 make Active sign an agreement with 282 through Brady.

3 My next step was to tell him to go to the
4 International and proceed from there because that would be
5 the normal procedure, and we left it like that.

6 He said he would then get in touch with his
7 superior and that was it.

8 Q During this conversation, did you say anything
9 to Mr. McFarland concerning a memorandum of understanding?

10 A In 1971, we have a memorandum of 1971 which was
11 a decision and signed by both Internationals; my International,
12 which is the United Association, and the Teamsters
13 International. In respect, I believe there was business agents
14 that signed the same but this was in 1971 with 282, Local 1,
15 Local 2, Local 371 and 457, which are all plumbers' locals of
16 the United Association.

17 MR. COFFEY: Mark this as Petitioner's Exhibit 14.

18 THE CLERK: Petitioner's Exhibit 14 so marked.

19 (So marked.)

20 Q Did you make reference to that agreement?

21 A He said he wouldn't abide by this decision that
22 had no bearing on this particular job.

23 THE COURT: Let me see if I can get this
24 straight. Was he talking about this job?

25 THE WITNESS: This job.

1
2 THE COURT: Did he want the plumbing company to
3 have an agreement generally with 282 or only for this
4 job?

5 THE WITNESS: My understanding was for this job.

6 THE COURT: Only on this job. May I see that
7 document?

8 (Counsel handing document to the Court.)

9 MR. ARONS: It's hard to read, your Honor.

10 THE COURT: Go ahead.

11 Q Now, I direct your attention to mid-June 1977.
12 Did you have another call from Ferrari at that time?

13 A Yes.

14 Q What did he say to you and what did you say to
15 him?

16 A At that time, I believe is when the picket went
17 up again. A picket went up. That was the first picket.

18 He told me there was a picket line up and I'd
19 better tell Active to sign with the Teamsters. I said, "No,
20 I am claiming the work. The work is the work of the
21 plumbers. We consider it a tool of the trade."

22 He told me they had a meeting, not an
23 arbitration but a meeting, with the Trade Board which consists
24 of the Building Trades Council -- not the Building Trades
25 Council but the BTEA, and he told me a decision now was made

1
2 there by Mr. Fader, that it was work -- they should have a
3 Teamster on the truck.

4 I told him that it was not the proper procedure
5 in filing an immediate arbitration proceeding because we have
6 between the Building Trade Employees Association and the
7 Building Trades Council an agreement called the New York Plan
8 and this New York Plan is composed of both sides getting
9 together.

10 If two business agents can't get together on a
11 jurisdictional matter on the job, the very next step is that
12 the one that is making claims for jurisdiction should go to
13 the BTEA and in turn, the BTEA would go to the Building
14 Trades Council and there would be a member of the Building
15 Trades Council, a member of the Building Trades Employees
16 Association, a member of the two respective unions, and they
17 would sit down and get immediate arbitration, normally within
18 a week, if possible, and try and iron it out, and if it
19 wasn't ironed out at that time, they would probably refer them
20 to their respective Internationals and go through a normal
21 jurisdictional problem that way.

22 I also told Ferrari at that time that being
23 this wasn't done, being Brady is signed with 282, their next
24 step should be for them to contact their International, if
25 282 wasn't going to contact their International.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Immediately after the picketing ended, did you have a conversation with Mr. Cohen?

A Did I have a conversation with Mr. Cohen, immediately after the picketing?

Q Right. On June 16th, let's say, a day afterward, concerning a shaper on the job.

A Yes, he had told me that Brady was paying for a Teamster.

I said, "If Brady's paying for a Teamster, that's his business, not mine."

I said, "Are the plumbers driving the truck?"

And he said, "Yes."

So I said, "If Brady wants to pay them to stand by, that's Brady's problem, not mine."

Q Did you tell him that you would strike the job if the plumbers were taken off the job?

A Did I say that to who?

Q To Cohen.

A What I said to Cohen, if the Teamster drove the truck, I don't know what my men would do. I don't know if my men -- I know the fishing was good. I didn't know what they were doing. I never mentioned the strike.

(continued next page)

1

2

Q On June 22nd, was there another picket line?

3

A Yes.

4

Q Did you get a call from Mr. McLaughlin?

5

A Yes, I believe he called me eight o'clock that

6

morning and left me his home phone number in case there was a

7

problem.

8

Q What did he say to you and what did you say to

9

him?

10

A He had sa'd to me that, naturally it wasn't

11

coming from him, that if Active does not sign an agreement

12

with 282, Brady is going to terminate his contract.

13

I says if that's what you are saying, you got to

14

do what you got to do, and that was the end of the

15

conversation.

16

Approximately an hour later I received a call

17

to call back Mr. McLaughlin. I did call him back and he said

18

to me that he had made a misstatement and he wanted to correct

19

his statement to say that he is no longer saying that he is

20

terminating the contract but he would suspend them for three

21

weeks, from what I understand.

22

Q Did you tell -- did you have any conversation

23

with Mr. McLaughlin concerning what the intention of Local 1

24

was in regard to this dispute?

25

A The intention of Local 1?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Yes. Did Mr. McLaughlin ask you what your position was?

A Yes, he asked me my position. I said our position was that we considered the truck the tool of the trade on the job.

Q Did he ask what Local 1's stand would be if they forced a Teamster on the Active truck?

A If Brady forced a Teamster on it and knocked the plumber off?

Q Yes.

A Yes, I told him our position would probably be the men wouldn't go to work. That would probably be the position of the men on the job, knowing the plumbers.

MR. COFFEY: Okay, that's all for this witness.

CROSS-EXAMINATION

BY MR. MANGAN:

Q Mr. Sclafani, would your position be the same -- you describe the work of the Jeep and you say it was to pick up men and tools of the trade.

Well, if in fact that piece of equipment was being used for the hauling of material from location to location on the job site, would your position with respect to the use of that vehicle be the same as you stated it to be; a tool of the trade?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes. Can I explain why?

THE COURT: Yes.

A Because when normally the men in the morning do a shanty, which is a dress shanty and also this dress shanty is a little complex, we are talking about a very small area.

The job is laid out over a big area. The actual work itself is done in another small area.

From the shanty to the job site, where the men are actually working, naturally the whole thing is one job site. From the shanty, they load up in the morning whatever stuff they have to keep under lock and key, because you can't leave some stuff out, such as lead. It's a very expensive item and easily stolen.

They go to the place where they are working and make the drops where the men are working, actually within walking distance.

They take the lead they have to be using in the morning. Each strip of lead is usually twenty-five pounds, that they usually use, put in a melting pot and join the pipe together that way.

That Jeep and truck lays there until, normally, for the time they go back for lunch. The man who is driving the truck goes down in the ditch and installs the pipe in the trenches.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: How is lead a tool?

THE WITNESS: Lead is material. There are also tools to put this pipe together.

THE COURT: Lead is material, isn't it?

THE WITNESS: Yes.

THE COURT: Elbows?

THE WITNESS: Yes.

THE COURT: Lengths of pipe?

THE WITNESS: Lengths of pipe are already on the job site. The transporting of any material that men cannot pick up is done by a cherry picker that is being operated by a member of Local 15. They sling the pipe.

THE COURT: I understand how it is done. There is testimony that sometimes there is five foot lengths?

THE WITNESS: Most of the five-foot lengths that I have seen with my own eyes on the job, I have seen the men carry on their backs.

THE COURT: Are some of them transported on the Jeep?

THE WITNESS: I couldn't answer you that.

THE COURT: They at least transport lead and elbows and connectors and things like that, don't they?

THE WITNESS: Yes.

1
2 THE COURT: Okay. Thank you.

3 MR. MANGAN: I think you have covered it, your
4 Honor.

5 BY MR. MANGAN:

6 Q I was somewhat concerned about the signing of a
7 contract with 282. This was a statement allegedly made to
8 Mr. Sclafani by Mr. Ferrari, late in May or early in June, but
9 it's standard when there is a G.C. that there be subcontractors
10 that might have signed labor agreements, but those labor
11 agreements would be limited to that particular job for the
12 account of Brady and for that particular site. Isn't that
13 correct, that's what you understood Mr. Ferrari to be telling
14 you with respect to --

15 A No, it's not my understanding. What I under-
16 stood Mr. Ferrari to tell me is that Active has to sign an
17 agreement with 282.

18 Q For that site and for that job?

19 A He has to sign an agreement.

20 THE COURT: Why are you going over these things
21 over and over again? Are you trying to change his
22 testimony? I don't understand the cross-examination.
23 You have the record.

24 Thank you very much.

25 THE WITNESS: Thank you.

1
2 THE COURT: I can't give you an injunction on
3 this record.

4 MR. COFFEY: Your Honor, I think that we have
5 two things here. We have a possibility of a 8(b)(4)(b)
6 and that would require Brady to be a neutral, but we
7 also have a possibility of 8(b)(4)(d) and there is a
8 clear jurisdictional dispute here.

9 THE COURT: They have a contract with these
10 people. There is no question that 282 represents
11 drivers of Brady.

12 MR. COFFEY: Yes, but they are beginning to get
13 work assigned from one group of employees to another
14 group of employees.

15 The law is clear, if you are picketing for that
16 purpose, then that's illegal.

17 THE COURT: I don't see that as the law. As
18 far as 8(b)(4)(b) --

19 MR. COFFEY: They may have a legitimate dispute
20 over the contract of Brady but the object of their
21 picketing is also to get Brady to knock Active off the
22 job and I think that's what they have succeeded in
23 doing.

24 THE COURT: They are not interested in getting
25 Active off the job. They are only interested in the job.

1 I don't see (b) involved in this at all.

2 MR. COFFEY: This is what they caused Brady to
3 do and this is what ended the picketing.

4 THE COURT: They are perfectly willing to have
5 Active continuing with the work but all they are
6 saying is that Active can't transport from point to
7 point within the job site, materials.

8 MR. COFFEY: That's their dispute. That's
9 their jurisdictional dispute.

10 THE COURT: Now you are talking about (d).
11 I don't see how (b) is involved in this at all.

12 MR. COFFEY: Well, here the picketing itself
13 was not only directed -- was not directed at the
14 subject which, who could settle the dispute.

15 THE COURT: The picketing is clear that it was
16 only directed to Brady. The sign said the dispute was
17 with Brady. The whole context of the discussions were
18 with respect to Defendant's Exhibit A, the hi-rise
19 contract of 1975 to '78, Section 9, paragraphs, I
20 suppose, 1 and 2, with respect to the transfer on the
21 site.

22 There is no dispute with respect to material
23 coming into the site from outside. I find that as a
24 matter of fact.
25

1 The testimony of everybody is agreed on that.
2 The only question is with respect to transference
3 within the site. I don't believe there is any credible
4 testimony.

5 Everybody agrees that once the dispute was
6 clarified, nobody was trying to stop them from bringing
7 stuff in from the outside. The only question is the
8 deliveries from point to point of materials, not tools,
9 within the site. That's clearly covered by the
10 Defendant's Exhibit A.

11 MR. COFFEY: That's clearly a jurisdictional
12 dispute.

13 THE COURT: I don't understand why.

14 MR. COFFEY: For an assignment of work to be
15 performed by one labor organization to another labor
16 organization, and that you don't need any primary/
17 secondary distinction with regard to that.

18 There are methods by which Respondent can get
19 satisfaction through a suit or through the N.L.R.B.

20 THE COURT: Let's read (d), because that's --
21 it's Section 8(b)(4)(i)(ii)(d), forcing any employer
22 to assign particular work to employees in a particular
23 labor organization, rather than to employees in another
24 labor organization, unless such employer, and that's
25 the phrase. It's this "unless" clause that counts.

1 "Unless such employer is failing to conform to
2 an order or certification determining the bargaining
3 representation for employees performing such work."

4 Is 282 certified to do this work?

5 MR. COFFEY: Your Honor, that section does not
6 apply at all here. That particular dispute is not at
7 issue here and that's the only exception.

8 THE COURT: Are you claiming that the exception
9 applies?

10 MR. MANGAN: Sure, your Honor.

11 THE COURT: Is 282 certified?

12 MR. MANGAN: To my knowledge, I can make a
13 representation categorically, but they are. They are
14 recognized as the bargaining representative and have
15 entered into this collective bargaining relationship
16 with Brady.

17 The objective of local 282 was only to have
18 compliance with the terms and conditions of that
19 contract.

20 They went to arbitration and they, through a
21 grievance procedure, they got a ruling if that tribunal,
22 that in fact there was a violation of the contract by
23 Brady, and the obligations of Brady under the contract,
24 that any of the on-site trucking being performed, beyond
25 the one drop, had to conform to the terms and conditions

1 of that contract. That's only, that had the picketing --

2 THE COURT: I don't understand. You interpret
3 the act as preventing an employee's organization from
4 striking when the employer violates the agreement.

5 MR. COFFEY: In this particular -- if we had
6 decided the ten-day hearing, awarding the disputed
7 work to the Teamsters, that would allow them to picket,
8 but here the only exception specified in the act
9 pertains to the failure of an employee to adhere to
10 a Board order of certification, covering the work in
11 dispute.

12 No such order or certification has been issued
13 in this case. We have to have a ten-day hearing.

14 THE COURT: It seems to be briefed. It seems
15 to me, and I so rule as follows: --

16 MR. COFFEY: Before you rule, your Honor, can
17 I explain further?

18 THE COURT: I need a brief on it. I am not
19 going to make a final decision on it now. I make all
20 the findings on the proposed findings of fact on
21 page 1, page 2, page 3 and page 4, up to subdivision (p).

22 MR. COFFEY: Up to (p)?

23 THE COURT: And there my finding is that at
24 all times material herein, Respondent has had a labor
25 dispute with Brady concerning the failure of Brady and

1 subcontractor Active to employees of 282 -- that
2 should be employee members -- that would drive trucks
3 carrying construction supplies at the JFK site, from
4 point to point within the job site.

5 The dispute does not concern the carrying of
6 tools or people used in plumbing work, nor does it
7 concern the movement of supplies from outside the job
8 site to a single delivery within the job site.

9 Then on page 5, I make the findings in (q) and
10 (r) and in (s), they have to be modified so it reads:
11 "In furtherance of its dispute with Brady," and we go
12 to read, "as prescribed above in subparagraph (p),
13 Respondent threatened Brady that it would engage in a
14 work stoppage and picket the JFK site, unless a member
15 of Respondent is assigned to drive the Active Jeep
16 truck at the JFK site, while carrying construction
17 material from point to point within the job site,"
18 and in (t), it has to be modified to read, "In
19 furtherance of its dispute with Brady."

20 In (u) just a minor change; seven lines down.
21 It's "work on goods" instead of "any." The word "any"
22 is just confusing.

23 (v) has to be changed to read "an object of the
24 acts and conduct of Respondent set forth in
25 subparagraph (s)(t), and (u) above was and is to force

1 and require Active to assign the work of driving trucks
2 at the JFK site, carrying construction material from
3 point to point within the job site, to employees who
4 are represented by Respondents, rather than by
5 employees who are represented by Local 1."

6 I will hold off on the conclusions of law at
7 this point. It seems to me that if you are right, that
8 "unless" clause doesn't apply --

9 MR. COFFEY: It would only come into -- if there
10 was a ten-day hearing --

11 THE COURT: I am not sure what the rule is.
12 I want it briefed. I find that (p) doesn't apply here.
13 We have simply a (d) situation. Whether that "unless"
14 clause applies here, I don't know. I don't know what
15 it means.

16 MR. COFFEY: This would come into effect after
17 this was a ten-day hearing, after it was sent up.

18 THE COURT: Could you brief it for me? If you
19 are right, you are entitled to the injunction under
20 Subdivision (b). How long do you want the brief?

21 MR. COFFEY: Your Honor, I put in a brief.

22 THE COURT: You are satisfied with your brief?

23 MR. COFFEY: Yes.

24 THE COURT: You want to brief it?

25 MR. MANGAN: Yes, sir, I do.

1 THE COURT: How much time do you want?

2 MR. MANGAN: Do I have until Monday? I'd like a
3 week.

4 MR. ARONS: Your Honor, if I may, does that
5 basically mean we still don't work?

6 THE COURT: I will take care of that in a
7 moment.

8 Pending the receipt of that brief, and decision
9 on that point, I am going to grant a restraining order
10 so that the work can continue.

11 MR. MANGAN: Your Honor, before you do that --

12 THE COURT: Let me tell you what my intention is
13 and you can argue it. Permit the use of both the Jeep
14 and Jeep truck for the carrying of tools, personnel,
15 lead, up to twenty-five pounds on any trip -- is that
16 the way the bars come; lead up to twenty-five pounds --
17 on each trip to any one job site, and pieces of pipe
18 up to five feet in length.

19 I don't want you to load up the truck with a big
20 drop. Do you have a problem with that?

21 MR. COHEN: Twenty-five pounds of lead would
22 caulk only one ten-inch pipe. When the men go out,
23 they might need fifteen or twenty strips.

24 THE COURT: Now you are talking about major
25 supplies. Why don't you have your cherry-picker do it?

1 You better have your cherry picker do it so we can keep
2 the dispute down to a minimum.

3 Let the cherry picker do the big pieces. I
4 only want the truck to take a few pieces here and
5 there. Even when men carry, it's awkward. Let them
6 do it, the trucks coming in from outside on a one-drop
7 basis.

8 I want to minimize the dispute until I make a
9 decision. I know it's awkward for everybody, but
10 that's the way it will be.

11 If you need some truck to take a big amount of
12 material from one part of the site to another part of
13 the site, you will have to use a 232 driver.

14 MR. MANGAN: Could I just show you photographs
15 of the Jeeps that were used?

16 THE COURT: Yes, I want to get it working. I
17 want to get the matter briefed. Let's see if we can
18 be sensible.

19 MR. COFFEY: I don't want to be foreclosed that
20 we will put something further in.

21 THE COURT: If you are happy with the brief, I
22 am happy with it. I don't know anything about the
23 subject.

24 MR. MANGAN: These are the items carried on the
25 flatbed Jeep.

1 THE COURT: These are more than five feet.

2
3 MR. MANGAN: What will happen, the cherry picker
4 will be doing it and it's still a violation of the
5 contract between 282.

6 THE COURT: I interpret your agreement in terms
7 of trucks. A cherry picker is not a truck. A Jeep
8 truck is a truck but a cherry picker is not a truck.

9 You're Defendant's Exhibit A does not cover
10 cherry pickers. If you want to re-write your agreement,
11 don't do it here.

12 Mark all these pictures as Defendant's
13 Exhibit B-1, etc. Mark the whole envelope.

14 THE CLERK: Defendant's Exhibit B marked in
15 evidence.-

16 THE COURT: Give it to me (Clerk handing
17 envelope to Court.)

18 THE COURT: You have until Monday to submit a
19 brief. You will have until Tuesday to submit an
20 answering brief. You want to argue it further, I
21 will put it on for argument for Tuesday. Do you
22 want that? Do you want to submit it?

23 MR. MANGAN: Can we set it down for Tuesday
24 for argument?

25 THE COURT: Tuesday, ten o'clock for argument.

1
2 By that time, we will have the transcript so
3 we know where we are.

4 So we don't have another strike, I want the
5 work to go ahead and we will try to get this thing
6 decided as soon as we can.

7 MR. ARONS: One question, your Honor, if I may:
8 Basically, you said you will permit the tools, lead
9 up to 25 lbs. on each trip, pipe up to five feet, the
10 cherry picker is not considered a truck. Can
11 Mr. Cohen transport these large pipes by cherry picker,
12 not transporting it by truck? Any other load that he
13 transports that is large, he has to use a 282 man;
14 right?

15 THE COURT: Yes. I know nobody is happy with
16 it but that's the way life is. Do you all understand
17 what it is, or do you want it in writing?

18 MR. ARONS: I want it in writing. If it's not
19 in writing, there will be --

20 THE COURT: Try to agree on the terms.

21 MR. HANGAN: Can we get an understanding as to
22 what each trip means? If they are going to a
23 location, they can only go to that location once?

24 THE COURT: If they want to ride back and
25 forth twenty times, they can do it.

1
2 MR. COFFEY: I think there is no agreement
3 necessary since it's on the record.

4 MR. ARONS: As long as it is in the record.

5 THE COURT: I think it's desirable to put it
6 in writing. Let the attorneys work it out.

7 MR. ARONS: We are going to get into a hassle
8 on what site, when, how long? I don't want to get
9 involved in that problem. You put down what they can
10 do. When can we start working again?

11 THE COURT: Tomorrow morning. What time does
12 work begin?

13 MR. COHEN: Eight o'clock.

14 THE COURT: Eight o'clock have your men working.
15 I'd like to get it started. I don't know what the law
16 is. I may have to grant a permanent injunction --
17 a temporary injunction if the N.L.R.B. is right in
18 their interpretation, but you will have to get a case
19 on that. Their interpretation of the statute seems to
20 be a little bit strong.

21 Thank you, gentlemen.

22 (Whereupon, an adjournment was taken at
23 3:15 p.m.)
24

25 * * *

A119

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X

5 SAMUEL M. KAYNARD, :
6 Plaintiff, : 77-C-1413
7 -against- :
8 LOCAL 282, :
9 Defendant. :

10 -----X

11
12 United States Courthouse
13 Brooklyn, New York

14
15 July 26, 1977
16 2:00 o'clock p.m.

17
18
19
20
21
22
23
24
25
Before:

HONORABLE JACK F. WEINSTEIN, U.S.D.J.

HENRI LEGENDRE
COURT REPORTER

A120

Appearances:

VINCENT COFFEY, ESQ.
Attorney for Plaintiff

KENNETH O'CONNOR, ESQ.
Attorney for Defendant

A121

1 THE CLERK: Civil hearing Samuel M. Kaynard
2 versus Local 282.

3 THE COURT: I'll hear you.

4 MR. COFFEY: As to the 8(b)(4)D allegation in
5 our petition, a judicial dispute -- involves a dispute
6 between two unions because of an assignment of work,
7 and threatens to do so in support of a jurisdictional
8 dispute unlawfully. The only exception is in the
9 proviso to 8(b)(4)D, where if there is a board order,
10 a certification present, then such picketing would be
11 lawful. If the respondent claims that there is a
12 board order of certification here, let him produce it.

13 Even if there is only a primary dispute here,
14 as your Honor has found, the testimony has showed
15 that respondent wanted its members to drive the
16 vehicles in question, and these vehicles were being
17 driven by Local 1's members.

18 The testimony also shows that respondent's
19 agents threatened Brady with a work stoppage, engaged
20 in work stoppage, and the testimony further shows that
21 there is no board order or certification here, and
22 respondent can't claim protection of the proviso.

23 Respondent threatened picketing, work stoppage,
24 to get the work for its members rather than for
25 Local 1. The cases say that 8(b)(4)D is not limited

1
2 to completed views of employees working for the same
3 employer. The cases also say that if underlying
4 dispute is over work assignment and if a demand is
5 made under the guise of a contractual demand, this
6 does not infer immunity on it; and if an employee
7 supplies work, the union's remedy is arbitration or
8 on suit under the Act, not by picketing. This is a
9 classic case of 8(b)(4)D.

10 THE COURT: What if they arbitrate and the
11 arbitrator tells them they have to give the work to --

12 MR. COFFEY: They can enforce that in court.
13 They are not allowed to picket.

14 THE COURT: How would they enforce it?

15 MR. COFFEY: Go into court and ask the court
16 to enforce their arbitration as they do in any other
17 case of an arbitration order that is not fulfilled.

18 THE COURT: Anything else?

19 MR. COFFEY: That's our position on that. As
20 to the 8(b)(4)D --

21 THE COURT: I don't want to hear about that
22 at the moment.

23 MR. O'CONNOR: Your Honor, when we were here
24 on Wednesday I was not familiar with the case law
25 on 8(b)(4)D, and I went back and tried to find out.

1
2 some of the answers to some of the questions that we
3 had raised here as to whether or not 8(b)(4)D ought
4 to be taken literally, or is there another thought
5 process that goes into the determination as to
6 whether or not there is such a violation, and taking
7 the lead case, the Columbia Broadcasting System's
8 case, which was cited in the brief that I have
9 submitted to you, the footnote in that decision
10 indicates that the board's thinking even before 1961
11 was that -- in Footnote 12 -- was that the board
12 looked at whether or not there was a board order,
13 a board certification; or thirdly it looked at
14 whether or not there was a contract, and if it was
15 a contractual dispute it was not a violation of
16 3(b)(4)D, and not a violation of -- under its
17 concurrent statutory provision 10K.

18 THE COURT: I looked at Footnote 12 and it
19 says what you say it says, but that's the board's
20 position. The Court doesn't say that's necessarily
21 the position it has to take, even assuming your
22 interpretation of that is correct. That would mean
23 the board at any time could change its view with
24 respect to this matter. Apparently the board's
25 representative is taking the position that enforcement

1
2 of a contract is not an exception.

3 What troubles me on this aspect of the
4 argument, if you look at 29 U.S.C. Section 158,
5 which is the provision we are talking about; what
6 you are asking me to do is add the phrase at the
7 end of that subdivision, D, or failing to comply
8 with a labor agreement, so it would read as follows.
9 It's an unfair labor practice if a labor organization
10 were to engage in a strike with the design of
11 forcing or requiring any employer to assign
12 particular work to employees in a particular labor
13 organization unless such employer is failing to conform
14 to an order or certification of the board determining
15 the bargaining representative for employees performing
16 such work, or unless the employer is failing to
17 comply with a labor agreement.

18 Now, I don't see how I could necessarily
19 read that into the statute, even assuming that
20 footnote 12 is correct in describing the board's
21 position as you have outlined it.

22 Now, you have also described relations between
23 D and what's called 10K, which is 29 U.S.C.
24 Section 160 Subdivision K. It says "whenever it is
25 charged that any person has engaged in an unfair

labor practice within the meaning of paragraph 4D of Section 158 paragraph b of this title, the board is empowered to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless within 10 days after notice that such charge has been filed; the parties to such disputes submit to the board satisfactory evidence that they have adjusted or agreed-upon methods for the voluntary adjustment of the dispute." Well, they haven't so agreed. It says, "Upon compliance of party of dispute with the decision of the board or upon such voluntary adjustment, such charge shall be dismissed."

I don't see how 10K applies here. There hasn't been any voluntary adjustment and the board hasn't adjudicated.

MR. O'CONNOR: There can't be an 8(b)(4)D violation unless there is a 10K jurisdictional dispute; and what the board has found is that there is no 10K dispute when you are dealing with a one union and one employer situation. That's all the cases that I submitted to you.

THE COURT: That has been the board's position but it is not necessarily the position the board has to take, even assuming you are right.

1
2 MR. O'CONNOR: It's the position that is
3 binding upon all of us at this time. Forgetting
4 about 8(b)(4)D at the moment, and just look at 10K
5 and just what has happened. The board has consistently
6 quashed hearings on 10K where there has been what
7 they term to be a single union, single employer
8 dispute, where it dealt with a violation of a
9 collective bargaining agreement.

10 THE COURT: If they are going to maintain that
11 policy, your remedy is to go to the board to quash --

12 MR. O'CONNOR: Not really; because the board
13 is coming in here now and saying that there has been
14 a violation of 8(b)(4)D, and that there is reasonable
15 cause to believe that the board will find such a
16 violation.

17 THE COURT: Right.

18 MR. O'CONNOR: There can't be reasonable cause
19 to find such a violation unless there has been a
20 violation under 10K; and in the case law under 10K --

21 THE COURT: Not the case law.

22 MR. O'CONNOR: The board's case law.

23 Chief Judge Wright in Delaware wrote a treatise
24 on the application on 8(b)(4)D and 10K to dispute,
25 that dealt with the union and employer, single

1
2 employer, and they found in that case they refused
3 to issue the 10L on the theory there was no 10K
4 violation and no 8(b)(4)D violation. He set forth
5 that unless there is a 10K violation there can't be
6 an 8(b)(4)D violation, that's why they hold the 10K
7 hearing before they find the violation, and if the
8 parties reach a settlement amongst themselves, then
9 there is no need for the 10K hearing and a dismissal.

10 THE COURT: I haven't reached this yet.

11 MR. O'CONNOR: I'm only pointing out the steps.
12 If there is no reason to reach an agreement here
13 because there has been no violation under board law,
14 under the case law, there has been no violation.

15 THE COURT: But the board is now apparently
16 changing its position.

17 MR. O'CONNOR: The regional director comes in
18 and he doesn't even assert in his brief, either the
19 first brief or the responding brief, that there is
20 this contractual distinction; that if there is a
21 contractual dispute there is no violation. They
22 don't -- his officer doesn't take it, but he doesn't
23 speak for the board, he speaks for the general
24 counsel; he's in the prosecutorial section of the
25 board.

1
2 MR. COFFEY: We don't think there is one union
3 involved here; two unions involved here, both
4 claiming work and this is work that the Teamsters
5 have never done.

6 THE COURT: That's what disturbs me from a
7 legal point of view. Analytically, I suppose you could
8 say that the dispute as I have held is only between
9 282 and Brady, but when Brady hires subcontractors
10 for purposes of the reality of the labor situation,
11 the subcontract -- his employees are in a sense,
12 are employees of Brady, that's what this whole
13 dispute is about. That's the essentials of 282 -- If
14 the subcontractors, employees are going to be
15 considered employees of Brady for purposes of dispute
16 then there is a jurisdictional dispute.

17 MR. O'CONNOR: That isn't what the contractual
18 provision says. The only thing that Brady is obligated
19 to do is to have some contractors who have a
20 collective bargaining relationship with 282 under the
21 same terms and conditions --

22 THE COURT: But for practical purposes and
23 getting the job done, Brady has both groups working
24 for it, some are direct and some are indirect through
25 subcontractors, that's where there is a dispute.

1
2 MR. O'CONNOR: Brady has entered into the
3 contract both with Local 282 and also entered into
4 the subcontracting agreement.

5 THE COURT: That presents the jurisdictional
6 problem that it's faced with because it entered into
7 this contract and turned over some of the work it had
8 -- it's contracted to do to an employer who employed
9 Local 1.

10 MR. O'CONNOR: That isn't the jurisdictional
11 dispute with Brady.

12 THE COURT: I agree; that from an analytical
13 point of view, that's not a dispute with Brady, but
14 the net effect of the total labor picture here is
15 that Brady is faced with a conflict between Local 1
16 which wants to do the work -- I had a union man here
17 from Local 1, he wants his people to drive the
18 trucks and Local 282 wants its people to drive the
19 trucks.

20 MR. O'CONNOR: You have that in every -- first
21 of all, you wouldn't have 10K or 8(b)(4)D allegations
22 unless you had another union involved, another group
23 of employees involved. That's why the distinction is
24 made as to whether or not there is a 8(b)(4)D viola-
25 tion when you have only one employer and one union

1
2 and you may have many other employers and many other
3 unions contesting work, but that doesn't necessarily
4 make it an 8(b)(4)D or 10K situation. The classical
5 situation, which is set forth in a number of these
6 cases, is when you have the employer in a position,
7 saying, "I don't care who performs the work, I just
8 want to get the work done, and I have a mechanic
9 and I have a carpenter."

10 THE COURT: That's the position here. He has
11 his own 282 driver, his subcontractor has a Local 1
12 driver, and Brady is saying I don't care who does
13 ~~the job~~, don't strike me.

14 MR. O'CONNOR: But Brady first of all it
15 isn't Brady who is in default of this court through
16 the board. Brady has gone to the grievance procedure
17 and had been directed by the arbitrator to comply
18 with the terms.

19 THE COURT: Is that grievance procedure
20 deemed arbitration for purposes of this kind of
21 situation?

22 MR. O'CONNOR: Yes sir.

23 THE COURT: Is that so?

24 MR. COFFEY: We take no position on that.
25 We're not sure what it is. It's not binding on the

board in any case.

MR. O'CONNOR: There are Supreme Court cases on having this joint employer-employee relationship, and a determination made by that tribunal is the same as having an arbitrator and is enforceable the same way.

THE COURT: I don't believe my holding so indicated, but I believe on the basis of the testimony Brady and 282 did go before the group designed to adjudicate disputes.

MR. COFFEY: Between them.

THE COURT: Between Brady and 282, and that group did direct Brady, as I recall the testimony, to have 282 drivers do this work.

MR. COFFEY: And Brady did all it could to get that done but Local 1 employees are active, and since Brady had no control over activity in any case they are still stuck with the problem. It doesn't care who the employees are, the dispute is between two labor organizations. The statute is clear.

THE COURT: I've held that the dispute is between 282 and Brady.

MR. COFFEY: Also there is a jurisdictional dispute here between Local 282 and Local 1.

MR. O'CONNOR: The second part of Judge Wright's opinion when it gets down to the nitty-gritty, a question can always be raised whether it's clear or unclear and Section 13 of the Act sets forth that where there is difficulty in interpretation, the interpretation should be that parties are left with the same remedies they had prior to the Act and those remedies are that you can picket and that the type of activity that Local 282 is involved in where there was any question about the interpretation that their activity was lawful and perfectly applicable under these circumstances --

MR. COFFEY: The fact that Local 1's employees have active work for the subcontractor and not for Brady is not controlling here. There is a dispute over work of two labor organizations, who both are employed, one directly through Brady; one through Brady subcontractors; to hold that there is no 8(b)(4)D violation under these circumstances would virtually emasculate 8(b)(4)D.

(continued next page)

1
2 THE COURT: In this proceeding, because I don't
3 know much about the N.L.R.B., assuming that you go to
4 adjudicate, what would it be called, 10(k)?

5 MR. COFFEY: We have one scheduled for August 3.

6 THE COURT: If you tried to adjudicate it, who
7 are the parties?

8 MR. COFFEY: Well, one would be Local 282;
9 Local 918 of the Teamsters since they drove the truck
10 into the site, and Local 1, the Plumbers and possibly
11 it could be one of the operating engineers seeking to
12 intervene here.

13 THE COURT: Bring 282, whether they wanted to
14 come in, and Local 1, whether they want to come in,
15 you could make them parties?

16 MR. COFFEY: Sure.

17 THE COURT: Does Brady become a party, too?

18 MR. COFFEY: The dispute is over the work between
19 the two labor organizations.

20 THE COURT: I am just asking because I don't know.

21 Does Brady become a party to the NLRB proceeding?

22 MR. COFFEY: Not to that particular one.

23 THE COURT: What about Active, does it become a
24 party?

25 MR. O'CONNOR: My recollection is just the labor

1 organizations. Again, the theory of 10(k) is that you
2 have these two group of employees and albeit it may be
3 some question raised between Mr. Coffey and myself,
4 but it's two groups of employees, one employer, and
5 the employer says, "I don't care which one of you two
6 do it, and the Board will make that determination.
7

8 THE COURT: If the Board is not party to the
9 proceeding, you really have a dispute between Local 1
10 and 282.

11 MR. O'CONNOR: But the Board, you have to go
12 back to the law and their case law and they don't find
13 disputes where you have the type of situation that we
14 have here.

15 THE COURT: But I am not bound by --

16 MR. COFFEY: That's not even stated in the law.

17 MR. O'CONNOR: It's defined.

18 THE COURT: I assume that's the proper statement.

19 MR. O'CONNOR: Our 10(1) proceeding, whether or
20 not there is reasonable cause to believe whether the
21 Board will find the violation, and based upon the case
22 law that we have -- I am talking about Board case law --
23 there is no reasonable ground to believe that there is
24 a violation of 8(b)(4)(d), because if we go to the 10(k)
25 proceeding, the case law has been that this is not the

1
2 type of dispute that comes within the framework of 10(k),
3 and therefore there can't be an 8(b)(4)D violation,
4 as well as the application to 10(l) injunction. Under
5 8(b)(4)(d) there was no finding that under these
6 circumstances that -- or there is no reasonable cause
7 to believe under these circumstances that there is an
8 8(b)(4)(d) violation, so both ways, both under the
9 Board's law and the Board's cases, as well as the case
10 law -- District Court case law -- and at least the
11 Supreme Court, although it didn't have to meet that
12 point. It included in its decision what it was that the
13 Board was utilizing, and also examined the Legislative
14 history.

15 THE COURT: I don't find the CBS decision very
16 helpful. Under the United States Code, it seems to be
17 on its face against you -- whenever it is charged that
18 any person who has engaged in an unfair labor practice
19 within the meaning of 4(d), within the literal term,
20 there has been such a charge, the Board is empowered and
21 directed to hear and determine the dispute.

22 MR. O'CONNOR: That's right, your Honor.

23 THE COURT: Unless the parties to the dispute --
24 now, here the Board in presenting its case has taken the
25 position that the parties to the dispute are the unions

1
2 and not the employer.

3 MR. O'CONNOR: But the party to the dispute when
4 that has been interpreted meant a jurisdictional
5 dispute, and the only way that you could have a juris-
6 dictional dispute would be if you had one employer and
7 two labor organizations representing employees of that
8 employer, that's the situation. In the case that I
9 appended to the brief --

10 THE COURT: I've read that.

11 MR. O'CONNOR: There you had SIU and SMU and
12 you had the PR Holding Corp., if you will. Now, the
13 management corporation handling the SIU group was
14 Sealand -- it has a different name here -- but in
15 effect it's Sealand. The holding corporation then
16 decides no longer will it have two managing groups.
17 It has the SIU group, and that means that Sealand
18 becomes the managing agent for both the SIU group and
19 the SMU group, and the NMU managing agent is out; and
20 the NMU picketed and they said that there was no
21 jurisdictional dispute under those circumstances.
22 Even though you had two unions and you had the owner of
23 these vessels, it was not a jurisdictional dispute
24 because the two labor organizations didn't have a
25 contract with the same employer, and they found that

1 there was no 10(k), they quashed the 10(k) hearing.

2
3 Now, in each one of these cases you had one
4 employer -- two employers with two labor organizations.

5 THE COURT: How do you distinguish this case
6 which is attached to the brief, the National Maritime
7 against Seafarers?

8 MR. COFFEY: I would say they came down on a
9 very narrow ground. I really don't understand what
10 happened in that case, your Honor, to tell you the
11 truth. I don't think it falls -- in that case, they
12 were deciding the case on matters that had very little
13 to do with the jurisdictional aspect of the case.

14 In our cases, we have cited in our petition it
15 is clear that for a long time there does not have to
16 be one employer. You don't have to have one employer.

17 THE COURT: Do you have an NLRB case such as the
18 one before us, where they took jurisdiction and held
19 the violation.

20 MR. COFFEY: 145 NLRB 1580, you have a copy of
21 that and Western Electric.

22 THE COURT: Let me take a look at 145.

23 MR. COFFEY: It seemed to me the language in
24 Respondent's case more or less upheld general counsel's
25 position.

1 THE COURT: Let me just read this. Where there
2 are two subcontractors where the dispute is with the
3 subcontractor, rather than with the contractor --

4 MR. COFFEY: It's not the same employer, your
5 Honor.

6 THE COURT: Do you have any case where the
7 dispute is with the contractor?

8 MR. COFFEY: Try Serella (phonetic) v. Western
9 Electric 141, 888.

10 MR. O'CONNOR: 203 NLRB 861.

11 THE COURT: Let me give the Board a chance,
12 first.

13 MR. COFFEY: The principle is clear. He says
14 it always has to be the same employer. It was two
15 different ones in that one.

16 THE COURT: This is also a dispute between sub-
17 contractors. This comes within the general principle,
18 although it's different from our case.

19 MR. COFFEY: 82 NLRB 916, and 250.

20 THE COURT: I don't see that 916 helps much.
21 I think that is with one employer.

22 MR. COFFEY: I don't think so, your Honor.

23 THE COURT: Do you have a case?

24 MR. O'CONNOR: The closest one that comes into
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ERASABLE

the area you are looking for is 185 NLRB 186.

THE COURT: That's your closest case?

MR. O'CONNOR: That's the closest case.

THE COURT: All right.

MR. COFFEY: How about this one, your Honor?

THE COURT: 118 NLRB 978.

Well, the contract didn't cover this work.

MR. COFFEY: There is more than one employer involved.

THE COURT: It doesn't seem to me this is very helpful; a whole group of employers trying to negotiate an industry-wide contract.

MR. COFFEY: On the point that it's more than one employer --

THE COURT: But that's different. I don't think that's helpful. Here what they call the prime employer or contractor decided to take over from the subcontractor. It doesn't seem it helps very much. Now, referring to 185 NLRB 186 --

MR. O'CONNOR: There again, it's picketing to preserve jobs and work opportunity, and you do have two unions involved and the position of the Board was that that was not the type of dispute that came within the 10(k) or 8(b)(4)(d). That essentially is where we

1
2 are. Just because there are two unions involved and
3 there are two separate employers, under those circum-
4 stances, and where one employer interferes with another
5 employer and the union then pickets, that does not
6 constitute 10(k) or 8(b)(4)(d) violation.

7 THE COURT: The Court relies in this case at
8 page 188, this is the International Longshoremen and
9 Warehouse Union in Local 8. The fact that the employer
10 was seeking to displace employees already doing the work
11 and the union striking was for the purpose of receiving
12 the jobs of employees whose employer chose to supplant
13 by reallocating the work to others. The distinction
14 they make there is between the case where the object of
15 the picketing is to preserve the work of employees who
16 had previously been doing it, and it's that kind of
17 dispute that is not intended by Congress to be
18 resolved pursuant to 8(b)(4)(d) and 10(k).

19 I think, really, it is a very confusing area
20 and there is no case that's been cited to me that's
21 quite on point. I would have to say that there is a
22 reasonable issue as to the law here, and under those
23 circumstances I really have no alternative but to grant
24 the injunction.

25 MR. O'CONNOR: The SIU case which was decided by

the Board in January of 1977 sets forth the thinking of the Board with respect to these questions, and where you have more than one employer and you have these two unions contending who was entitled to perform the work, what closer situation can you have?

Here, the NMU is picketing, saying it's our work.

THE COURT: Let me read the NMU case. That's the latest decision in this area.

MR. O'CONNOR: That's the latest decision in this area.

MR. COFFEY: If your Honor will look on page 6 of the decision, especially the paragraph -- unlike CBS, the case does not conform to Supreme Court; the case involves something else.

THE COURT: Well, this is also an elimination of jobs case.

MR. O'CONNOR: But what they are doing, they are going, and they are citing CBS for this contract idea. That's where CBS comes into play, that the reasoning in CBS in addition to the statutory language, you have the Board's position where you have a contractual dispute that you do not have jurisdictional dispute under 10(k).

THE COURT: I classify it more as a loss of jobs case.

1
2 MR. O'CONNOR: But I am saying the reason that
3 we are citing CBS -- CBS would have no application here
4 if it wasn't for the Board's position -- historical
5 position, where you have a contractual dispute you do
6 not have a 10(k) dispute.

7 THE COURT: I don't read the cases that way.
8 It seems to me that their position is where there is a
9 strike to protect present employment --

10 MR. O'CONNOR: That is one of the areas, but you
11 have a strike where it is to protect present employment
12 or as in this case where you have a strike to preserve
13 union work, which for purposes of recapturing that work
14 which is contractual language in 282, Brady contract;
15 and you have the 282 position that historically they
16 have performed the on-site trucking. Now, they may not
17 have performed the on-site trucking on this site, but
18 historically that's their position that they have
19 performed that work, and they are in dispute with
20 Active regarding the performance of that work right from
21 the beginning, and they had taken the position you only
22 had March 30th when the job started.

23 THE COURT: You misspoke. You said dispute with
24 Active.

25 MR. O'CONNOR: With Brady. The dispute with Brady

1 MR. O'CONNOR: Brady. The dispute with Brady
2 started -- and in fact you have their possession right
3 from the start, that Brady's obligation was to have
4 282 employees performing that work. They went through
5 the grievance procedure. They got a determination that
6 it is their work, Brady didn't comply with that
7 and refused to comply with it right through until the
8 picketing commenced again, so it isn't a matter that
9 will have such a traditional past practice history;
10 that 282 is now coming in and looking to remove the
11 union that was performing that work and performed it
12 for a long period of time so that a waiver could be
13 established. Here you have a new project, 282's posit-
14 ion was consistent right from the beginning and they
15 had the arbitration award. They were left with no
16 other recourse. Mr. Coffey says, "Go into Court." Even
17 if he went into Court and we had this Court confirm
18 that report. There has to come a time when that Order
19 is enforced.

20 THE COURT: They could enforce it by paying for
21 the 282 driver.

22 MR. O'CONNOR: But that isn't their only remedy.
23 Even on the Board's market you have to have the employer
24 willing to comply with the arbitration procedure, and
25 if he doesn't go along with the arbitration procedure

1 then you are free to go out on strike.

2 THE COURT: The difficulty is that Brady can't
3 comply without violating its agreement with Active;
4 if Active is right that it has the right to keep Local
5 One People. It's an impossible situation from the
6 employer's point of view.

7 MR. O'CONNOR: Not really from Brady's point of
8 view. Brady as you indicated to them -- Brady has
9 people there that can perform this work. It's not a
10 matter of putting people on to Brady's payroll or putting
11 people on to Active's payroll.

12 THE COURT: If Brady does the work it's going to
13 pay for it. It's also going to have to pay Active,
14 so it reduces its profit.

15 MR. O'CONNOR: But they have people there -- well,
16 Brady entered into this contract with 282 fully aware of
17 what the obligations were, and Active should have known
18 from Brady --

19 THE COURT: Brady should not have subcontracted.

20 MR. O'CONNOR: Without Active being fully aware
21 of it; and the dispute that 282 has is with Brady, but
22 now it's left to the position if this injunction is
23 issued, that one there, isn't there reasonable cause
24 to believe that the Board is going to find that there
25 is a LOR violation here based upon its past positions,

132 15 RA 11
COTTON CONTENT A 145

1 whether it be pre CBS or post CBS, because their posit-
2 ion is this is a contractual dispute and they don't want
3 to substitute themselves for the grievance procedure;
4 and if it's not reasonable to believe that the Board is
5 going to find that there is a violation of 10K or 8B4D
6 then there is no basis for a 10K injunction. This is
7 a jurisdictional dispute within the framework of 8B4D,
8 within the frame work of the statute as interpreted by
9 the NLRB and as accepted by the Courts based upon not
10 only the statute but the legislative history behind it.

11 MR. COFFEY: All I can say, this is the classic
12 jurisdictional dispute whether there is one employer or
13 more than one employer it doesn't matter, both unions
14 want to do the work.

15 THE COURT: I'm not sure it's classic, it's
16 certainly not clear to me, but I think it's a sufficient
17 issue as to the law. I'll have to grant the injunction.

18 MR. O'CONNOR: Then your Honor, what we have
19 is Section 13 of the Act where it's unclear. If it's
20 ambiguous the parties should be left to their NLRB
21 remedy; that could be found in Judge Wright's opinion
22 as well.

23 THE COURT: 1637

24 MR. O'CONNOR: Yes.

25 You may find the language in Judge Wright's

WILLIAMS FALLS

REZ LRA 3 E

A146

statutory language as well.

MR. COFFEY: The injunction here only seeks to preserve the status quo until we could decide this matter.

THE COURT: The status quo ante was to strike.

MR. COFFEY: Local One was doing the work, Local 282 was not.

What our interest is was to preserve the status quo before the respondents engaged in the picketing and work stoppages.

THE COURT: 163 doesn't really help the situation.

MR. O'CONNOR: Before any one of these projects started there is a pre job conference and all of the contractors -- the general contractor and the sub-contractors are present in the union and all of these issues are outlined so that everybody is fully aware of what their responsibilities are. It isn't simply a matter of --

THE COURT: 282 brought it to the attention of everybody at that time?

MR. O'CONNOR: At that time.

MR. COFFEY: That doesn't seem to change anything, your Honor. That indicates warnings further back. That is just more of the same as far as we are concerned.

THE COURT: I must say I find it very troublesome.

1 I don't find Judge Wright's decision covered it exactly.
2 I think there is a reasonable ground to believe that
3 there may be a dispute here resulted by the Board.

4 I am going to continue my stay as a preliminary
5 injunction under the same terms and the exercise of my
6 inequitable power and position to modify and form the
7 remedy which limits the arm to all parties as much as
8 possible.

9 MR. COFFEY: How about the affirmative relief
10 that we are requesting?

11 THE COURT: Of What?

12 MR. COFFEY: In our injunction request that
13 respondents send a letter to the other trades involved
14 and the other employers at the site.

15 THE COURT: I don't believe it's necessary.

16 MR. O'CONNOR: The question that has come up,
17 these lengths of pipe without their being a weight limita-
18 tion, they are using a lot of this, a lot of the pipe
19 and instead of complying with your suggestion that they
20 use Brady trucks instead of the Active truck when they
21 have a volume of it they are not doing that, so I would ask
22 that there be some form -- you have a 25 pound weight
23 limitation on the lead and if we had similar limitations
24 upon the pipe --

25 THE COURT: From the picture it looks like it

1 weighs a couple of hundred pounds.

2 MR. O'CONNOR: They put five or six of these
3 lengths on the truck.

4 THE COURT: They can't cut the long pipes into
5 five foot lengths.

6 MR. O'CONNOR: You saw there were a number of
7 lengths that were standard lengths that were five feet
8 and under.

9 THE COURT: Have they used the Brady trucks at all?

10 MR. O'CONNOR: No, just the Active trucks.

11 THE COURT: And the cherrypicker?

12 MR. O'CONNOR: And the cherry picker.

13 MR. COFFEY: Are you going to issue this in the
14 form of a formal document?

15 THE COURT: You will have to submit the Order
16 with my findings of fact.

17 MR. COFFEY: I submitted your findings of fact
18 back to you.

19 THE COURT: You will have to give the findings of
20 law and the order.

21 MR. COFFEY: You already have one.

22 I'll give you our recommended temporary injunction,
23 and another copy of the findings of fact.

24 THE COURT: Can't you get together and based on
25 this discussion put it in writing. Let the NLRB draft it

1 and submit it to the union and they will go over it.

2 You should be able to agree on it.

3 MR. O'CONNOR: Can't we get any weight limitation
4 on this?

5 THE COURT: I don't want to make any further
6 findings of fact. Apparently the 5 foot lengths are
7 not the most common lengths.

8 MR. O'CONNOR: Between the cherry picker and the
9 five-foot lengths they are handling the whole thing.

10 THE COURT: The cherry picker is your problem.

11 MR. O'CONNOR: What we have covered in the agree-
12 ment is the trucking, and they are using the trucks for
13 the purposes of five foot lengths.

14 THE COURT: They are using the cherry picker for
15 the bulk of the lead, aren't they?

16 MR. O'CONNOR: Not only for the bulk of the
17 lead, but for the pipe.

18 THE COURT: What can you do?

19 MR. O'CONNOR: Your agreement doesn't cover
20 cherry pickers.

21 THE COURT: When you said they could --

22 MR. O'CONNOR: Men is covered under the contract,
23 and material is covered under the contract, and the
24 question that was raised if they were in a pinch and
25 they get to a location -- but when they are putting

1 five and six pieces of 300, 400 pound pipe as well as
2 utilizing it for the purpose of transporting men that's
3 in direct violation of the contract.

4 THE COURT: It's a kind of compromise it seems to
5 me.

6 MR. O'CONNOR: It doesn't protect 282 at all?

7 THE COURT: Not with respect to the five foot pipe.

8 MR. COFFEY: Before we go into this may we argue
9 shortly urging you to reconsider?

10 THE COURT: I won't get involved with that. I
11 am giving you a B ruling why get involved with D.

12 MR. COFFEY: We feel it's justified under B.

13 THE COURT: I have given you a ruling.

14 Give your opponent your modified finding.

15 You will have to modify the finding of law and you have
16 to modify the order.

17 In the meanwhile you're subject to the stay.

18 There is no problem. You are going to give this
19 to the NLRB.

20 MR. COFFEY: Your Honor, the hearing on the
21 8(b)4B case is on tomorrow as of now on the 10K hearing.
22 In the 8B4D is now scheduled for August 3rd, both of
23 these or one of them or each of them may be put off
24 to a later date.

25 THE COURT: You want my copy of the transcript?

A 151

BEST COPY AVAILABLE

1 You ordered a copy?

2 Anything else I can do for you now?

3 MR. O'CONNOR: No.

4 THE COURT: I am sorry I can't give either of
5 you full satisfaction.

6 Findings of fact as I wrote them out, findings
7 of law as I have just indicated that there is no
8 B violation; that there is a reasonable ground to
9 believe that there is a legal basis for concluding
10 there is a capital D violation; and that considering
11 the equities of the parties, justice would both be
12 served during the prompt resolution of the dispute
13 by continuing the stay in the form of a preliminary
14 injunction, and then you will have to set out the terms.

15 MR. O'CONNOR: Thank you, your Honor.

16 (Whereupon, Court stood in recess in this matter
17 for the day.)

18 * * * * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SAMUEL M. KAYNARD, Regional Director of Region*
29 of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,

Petitioner

v.

77 Civil 1413

LOCAL 282, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard upon the verified petition of Samuel M. Kaynard, Regional Director of Region 29 of the National Labor Relations Board (herein called the Board), for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended, (herein called the Act), pending the final disposition of the matters involved herein pending before the Board, and upon the issuance of an Order To Show Cause why injunctive relief should not be granted as prayed in said petition. Respondent filed an answer to said petition. A hearing on the issues raised by the petition and answer was duly held July 20 and 26, 1977. All parties were afforded full opportunity to be heard, to examine and cross examine witnesses to present evidence bearing on the issues, and to argue on the evidence and the law. The Court has fully considered the petition, answer, evidence, arguments, and briefs of counsel. Upon the entire record, the Court makes the following:

FINDINGS OF FACT

1. Petitioner is Regional Director of Region 29 of the board, an agency of the United States, and files this petition for and on behalf of the Board.

A 153

2. On or about June 29, 1977, Active Fire Sprinkler Corp., herein called Active, pursuant to provisions of the Act, filed charges with the Board alleging that Respondent, a labor organization, had engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b) (4) (i) and (ii), subparagraphs (B) and (D) of the Act. Copies of said charges are attached hereto as Exhibits 1 and 2 and made a part hereof.

3. The aforesaid charges were referred to petitioner as Regional Director of Region 29 of the Board.

4. There is and petitioner has reasonable cause to believe that:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(b) At all times material herein, Robert Sasso is and has been Secretary-Treasurer of Respondent, acting on behalf of Respondent and an agent thereof, and John Carbone is and has been a business representative of Respondent, acting on behalf of Respondent and an agent thereof, and Edward McFarland is and has been a business representative of Respondent, acting on behalf of Respondent and an agent thereof, and William Cody is and has been Teamsters foreman - shop steward of Respondent, acting on behalf of Respondent and an agent thereof.

(c) Respondent maintains its principal office at 1975 Linden Boulevard, Elmont, New York and at all times material herein, Respondent has been engaged within this judicial district in transacting business and in promoting and protecting the interests of the employee members of Respondent.

(d) Active Fire Sprinkler Corp., herein called Active, is a New York corporation maintaining its principal office and place of business at Building 50, Brooklyn Navy Yard, Brooklyn, New York, where it is engaged in the business of performing plumbing services and related services in the construction industry Active, in the conduct of its business operations during the past year, its operations during said period being representative of its operations generally,

purchased steel aluminum, tools and other goods and materials valued in excess of \$50,000 of which goods and materials valued in excess of \$50,000 were transported and delivered from its place of business in interstate commerce directly from suppliers located outside the State of New York, who received such goods and materials directly from other suppliers located outside the State of New York.

(e) John T. Brady and Co., Inc., herein called Brady, is a New York corporation maintaining its principal office and place of business at 92 North Avenue, New Rochelle, New York, where it is engaged in the business of providing general contracting services in the construction industry. Brady, in the conduct of its business operations during the past year, its operations during said period being representative of its operations generally, purchased and caused to be transported and delivered to its sites steel lumber and other goods and materials valued in excess of \$50,000 of which goods and materials valued in excess of \$50,000 were transported and delivered to its sites directly from suppliers located outside the State of New York, and in foreign commerce directly from foreign countries.

(f) Burnar Electric Corp., herein called Burnar, is a New York corporation maintaining its principal office and place of business at 213-08 - 99th Avenue, Queens Village, New York, where it is engaged in the business of providing electrical contracting services in the construction industry.

(g) Novid Corp. herein called Novid is a New York corporation maintaining its principal office and place of business in Queens, New York, where it is engaged in the performing of excavating services in the construction industry.

(h) Active Brady, Burnar and Novid, and each of them, are, and have been at all times material herein, persons engaged in commerce within the meaning of Section 2(1), (6) and (7) and 8(b)(4) of the Act.

(i) At all times material herein the chauffeurs, drivers and warehousemen of Brady have been represented for purposes of collective bargaining by Local 282 International Brotherhood of Teamsters, Chauffeurs,

Warehousemen and Helpers of America, herein called Respondent, a labor organization, and at all times material herein, Brady has been bound by a collective bargaining agreement between it and Respondent, said agreement being for the period July 1, 1975 to June 30, 1978.

(j) At all times material herein the drivers of Active have been represented for purposes of collective bargaining by Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a labor organization, herein called Local 918, and at all times material herein, Active has been bound by a collective bargaining agreement between it and Local 918, said agreement being for the period August 17, 1974 to August 18, 1977.

(k) At all times material herein the plumbers of Active have been represented for the purposes of collective bargaining by Local Union No. 1 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, herein called Local 1, and at all times material herein Active has been party to a collective bargaining agreement with Local 1, said agreement being for the period August 8, 1975 to August 3, 1978.

(l) At all times material herein Brady has been engaged at the general contractor in the construction of a mailhandling facility for the United States Postal Service at a construction site located at the J.F.K. Airport, herein called the J.F.K. site.

(m) On or about March 1, 1977, Brady contracted with Active to perform the installation of plumbing at the J.F.K. site.

(n) Brady has also contracted with Burmar and Novid to perform other installation work of various kinds at the J.F.K. site.

(o) At no time material herein has Respondent represented any of Active's employees for the purposes of collective bargaining.

(p) At all times material herein Respondent has had a labor dispute with Brady concerning the failure of Brady and its sub-contractor Active to employ members of 282 to drive trucks carrying construction supplies at the J.F.K. site from point to point within the job site. The dispute does not concern the carrying of tools or people used in plumbing work, nor does it concern the movement of supplies from outside the job site to a single delivery within the job site.

(q) At all times material herein Active has assigned the driving of a jeep truck at the J.F.K. site to members of Local 1.

(r) At all times material herein, Active has assigned the driving of its trucks bringing material and supplies from Active's principal office and place of business to the J.F.K. site to members of Local 918.

(s) In furtherance of its dispute with Brady as described above in subparagraph (p), Respondent threatened Brady that it would engage in a work stoppage and picket the J.F.K. site unless a member of Respondent was assigned to drive the Active jeep truck at the J.F.K. site while carrying construction materials from point to point within the job site.

(t) In furtherance of its dispute with Brady, as described above in subparagraph (p), on or about June 16, 1977 and June 28 through July 1, 1977, Respondent, by its members who are employees of Brady, together with other agents of Respondent, engaged in a work stoppage and picketed the J.F.K. site.

(u) By the acts and conduct set forth in subparagraphs (s) and (t) above and by other means, including orders, directions, instructions, and appeals, Respondent has engaged in and has induced individuals employed by Brady, Burmar and Novid, and by other persons engaged in commerce, or industries affecting commerce, to engage in strikes and refusals in the course of their employment to use, manufacture, transport, and otherwise handle and work on goods, articles, materials, and commodities and to perform services and have threatened, coerced and restrained Brady, Burmar, Novid and other persons engaged in commerce or in industries affecting commerce.

(v) An object of the acts and conduct of respondent set forth in subparagraphs (s), (t) and (u) above, was, and is to force and require Brady to force and require Active to assign the work of driving trucks at the J.F.K. site carrying construction material from point to point within the job site to employees who are represented by Respondent rather than to employees who are represented by Local 1.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and of the subject matter of this proceeding and under Section 10(1) of the Act is empowered to grant injunctive relief.

2. There is, and Petitioner has reasonable cause to believe that:

(a) Respondent is a labor organization within the meaning of Section 2(5), 8(b) and 10(1) of the Act.

(b) Active Brady, Burmar and Novid are engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.

(c) Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii), subparagraph (D) of the Act, affecting commerce within the meaning of Sections 2(2) and (7) of the Act, and a continuation of these practices will impair the policies of the Act.

3. To preserve the issues for the orderly determination as provided in the Act, it is appropriate, just and proper that, pending the final disposition of the matters herein involved pending before the Board, respondents, their officers, representatives, agents, servants, employees, attorneys and all members and persons acting in concert or participation with them, be enjoined and restrained from the commission, continuation or repetition of the acts and conduct set forth in Findings of Fact 4 (s) (t) (u) and (v) above, acts or conduct in furtherance or support thereof, or like or related acts or conduct, the commission of which in the future is likely or may fairly be anticipated from respondent's acts and conduct in the past, and that respondent in order to insure compliance with said prohibitions, be affirmatively ordered to take the action ordered as per the Temporary Injunction issued on this date.

Dated at Brooklyn, New York this day of July, 1977.

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SAMUEL M. KAYNARD, Regional Director of
Region 29 of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,

Petitioner

v.

LOCAL 282, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Respondent

77 Civil 1413

ORDER GRANTING TEMPORARY INJUNCTION

This cause came on to be heard upon the verified petition of Samuel M. Kaynard, Regional Director of Region 29 of the National Labor Relations Board, for and on behalf of the said Board for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended, pending the final disposition of the matters involved pending before said Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court upon consideration of the pleadings, evidence, briefs, argument of counsel, and the entire record in the case, has made and filed its findings of fact and conclusions of law, finding that there is reasonable cause to believe that respondent has engaged in, and is engaging in acts and conduct in violation of Section 8(b)(4)(i)(ii)(D) of said Act, and that such acts and conduct will likely be repeated unless enjoined

NOW, THEREFORE, upon the above, it is

ORDERED, ADJUDGED AND DECREED that, pending the final disposition of the matters involved pending before the National Labor Relations Board, respondent Local 282 International Brotherhood of Teamsters, Chauffeurs and Helpers of America, its officers, representatives, agents, attorneys and all members and persons acting in connection with its participation within it, or them be and they hereby are enjoined and restrained from:

(a) In any manner or by any means, including picketing at or in the vicinity of the U.S. Postal Service Mailhandling Facility located at J.F.K. Airport, Jamaica, New York, threats to picket or to cause work stoppages, or orders, directions, instructions, requests, or appeals, however given, made or imparted, or by any like or related acts and conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by John T. Brady and Co., Inc. herein called Brady, Burmar Electric Corp. herein called Burmar, Novid Corp. herein called Novid or by any other person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service, or in any manner or by any means, threatening, coercing or restraining Brady, Burmar, Novid or any other person engaged in commerce or in any industry affecting commerce where in either case an object is to force or require Brady or its subcontractor Active to assign the work of driving trucks at the J.F.K. site carrying materials from point to point within the jobsite to employees who are represented by Respondent rather than to employees who are represented by Local 1.

It is further ordered that the use by Local 1 members of The Active Fire Sprinkler Corp.'s jeep and jeep truck on the J.F.K. jobsite for carrying materials shall be limited to the transportation of 25 pounds of lead and pipes of a length not exceeding 5 feet for each pipe in any one trip. Other material transported on-site by Active shall be transported either by "cherry pickers" or by the use of a truck driven by a member of Respondent.

Dated at Brooklyn, New York this day of 1977

United States District Judge

SAMUEL M. KAYNARD, Regional Director of
Region 29 of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,

v.

LOCAL 282, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

NOTICE is hereby given that Samuel M. Kaynard, Regional Director of the Twenty-ninth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order Granting Temporary Injunction entered in this matter on July 29, 1977 in the following respects:

A 161

(2) The failure of the court below to include in the last sentence of paragraph (a) of the Order after the words "employees who are represented by Local 1" the following language:

" . . ., by Local 918 or by any other labor organization, or who are not represented by any other labor organization."

(3) The inclusion by the court below of the affirmative portion of its Order requiring that:

It is further ordered that the use by Local 1 members of The Active Fire Sprinkler Corp.'s jeep and jeep truck on the J.F.K. jobsite for carrying materials shall be limited to the transportation of 25 pounds of lead and pipes of a length not exceeding 5 feet for each pipe in any one trip. Other material transportated /sic/ on-site by Active shall be transported either by "cherry pickers" or by the use of a truck driven by a member of Respondent.

Petitioner-Appellant hereby requests that a copy of this Notice of Appeal be served upon the following counsel for Respondent-Appellee:

J. Warren Mangan, Esquire
O'Connor, Quinlan & Mangan
400 Madison Avenue
New York, New York 10016


Joseph E. Mayer
Assistant General Counsel
Division of Advice
National Labor Relations Board

Dated at Washington, D.C.
this 14th day of September, 1977